



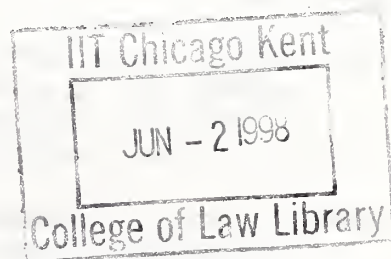
1998

Illinois Register

Rules of Governmental Agencies

Volume 22, Issue 22—May 29, 1998

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George H. Ryan
Secretary of State

TABLE OF CONTENTS
May 29, 1998 Volume 22, Issue 22

PROPOSED RULES

CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF	
Business Enterprise Program: Contracting With Businesses Owned And Controlled By Minorities, Females And Persons With Disabilities	
44 Ill. Adm. Code 10	8933
COMPTROLLER, OFFICE OF THE	
Standard Procurement	
44 Ill. Adm. Code 1120	8955
HUMAN SERVICES, DEPARTMENT OF	
Drug Abuse Programs	
77 Ill. Adm. Code 2055, Repeal	9020
Temporary Assistance For Needy Families	
89 Ill. Adm. Code 112	9102
GAMING BOARD, ILLINOIS	
Riverboat Gambling	
86 Ill. Adm. Code 3000	9113
HEALTH FACILITIES PLANNING BOARD	
Narrative and Planning Policies	
77 Ill. Adm. Code 1100	9134
Processing, Classification Policies and Review Criteria	
77 Ill. Adm. Code 1110	9163
PUBLIC AID, DEPARTMENT OF	
Medical Assistance Programs	
89 Ill. Adm. Code 120	9242
Support Responsibility Of Relatives	
89 Ill. Adm. Code 103	9255
TEACHERS' RETIREMENT SYSTEMS OF THE STATE OF ILLINOIS	
The Administration And Operation Of The Teacher's Retirement System	
80 Ill. Adm. Code 1650	9259

ADOPTED RULES

AGRICULTURE, DEPARTMENT OF	
Payment Of Eligible Claims Of Soil And Water Conservation District Employees Unpaid By Mid-Continent Medical Benefit Trust	
8 Ill. Adm. Code 755	9261
HUMAN SERVICES, DEPARTMENT OF	
Developmental Disabilities Services	
89 Ill. Adm. Code 144	9287

LOTTERY, DEPARTMENT OF

Lottery (General)

11 Ill. Adm. Code 17709307

PUBLIC HEALTH, DEPARTMENT OF

Ambulatory Surgical Treatment Center Licensing Requirements

77 Ill. Adm. Code 2059335

Hospital Licensing Requirements

77 Ill. Adm. Code 2509342

Illinois Swimming Pool And Bathing Beach Code

77 Ill. Adm. Code 8209357

EMERGENCY RULES

TEACHERS' RETIREMENT SYSTEMS OF THE STATE OF ILLINOIS

The Administration And Operation Of The Teachers' Retirement System

80 Ill. Adm. Code 16509374

PEREMPTORY RULES

AGRICULTURE, DEPARTMENT OF

Meat And Poultry Inspection Act

8 Ill. Adm. Code 1259384

NOTICE OF PUBLIC INFORMATION

REVENUE, DEPARTMENT OF

Index Of Letter Rulings (1st Quarter 1997) (Income Tax)9392

JOINT COMMITTEE ON ADMINISTRATIVE RULES

Second Notices Received9401

ISSUES INDEX I-1

Editor's Note: The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April 17, 1998 - Issue 16: Through	March 31, 1998
July 17, 1998 - Issue 29: Through	June 30, 1998
October 16, 1998 - Issue 42: Through	September 30, 1998
January 15, 1999 - Issue 3: Through	December 31, 1998 (Annual)

INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. The Register also contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current Register volume year and a Sections Affected Index listing by Title each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume year. Both indices are action coded and are designed to aid the public in monitoring rules.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State statute; and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies; is also published in the Register.

The Register is a weekly update to the *Illinois Administrative Code* (a compilation of the rules adopted by State agencies). The most recent edition of the Code along with the Register comprise the most current accounting of State agencies' rules.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

REGISTER PUBLICATION SCHEDULE 1998

Material Rec'd before Noon on:	Will be in Issue #:	Published on:	Material Rec'd before Noon on:	Will be in Issue #:	Published on:
Dec. 23, 1997	1	Jan. 2, 1998	June 30, 1998	28	July 10, 1998
Dec. 31, 1997	2	Jan. 9, 1998	July 7, 1998	29	July 17, 1998
Jan. 6, 1998	3	Jan. 16, 1998	July 14, 1998	30	July 24, 1998
Jan. 13, 1998	4	Jan. 23, 1998	July 21, 1998	31	July 31, 1998
Jan. 20, 1998	5	Jan. 30, 1998	July 28, 1998	32	Aug. 7, 1998
Jan. 27, 1998	6	Feb. 6, 1998	Aug. 4, 1998	33	Aug. 14, 1998
Feb. 3, 1998	7	Feb. 13, 1998	Aug. 11, 1998	34	Aug. 21, 1998
Feb. 10, 1998	8	Feb. 20, 1998	Aug. 18, 1998	35	Aug. 28, 1998
Feb. 17, 1998	9	Feb. 27, 1998	Aug. 25, 1998	36	Sept. 4, 1998
Feb. 24, 1998	10	Mar. 6, 1998	Sept. 1, 1998	37	Sept. 11, 1998
Mar. 3, 1998	11	Mar. 13, 1998	Sept. 8, 1998	38	Sept. 18, 1998
Mar. 10, 1998	12	Mar. 20, 1998	Sept. 15, 1998	39	Sept. 25, 1998
Mar. 17, 1998	13	Mar. 27, 1998	Sept. 22, 1998	40	Oct. 2, 1998
Mar. 24, 1998	14	Apr. 3, 1998	Sept. 29, 1998	41	Oct. 9, 1998
Mar. 31, 1998	15	Apr. 10, 1998	Oct. 6, 1998	42	Oct. 16, 1998
Apr. 7, 1998	16	Apr. 17, 1998	Oct. 13, 1998	43	Oct. 23, 1998
Apr. 14, 1998	17	Apr. 24, 1998	Oct. 20, 1998	44	Oct. 30, 1998
Apr. 21, 1998	18	May 1, 1998	Oct. 27, 1998	45	Nov. 6, 1998
Apr. 28, 1998	19	May 8, 1998	Nov. 3, 1998*	46	Nov. 13, 1998
May 5, 1998	20	May 15, 1998	Nov. 10, 1998	47	Nov. 20, 1998
May 12, 1998	21	May 22, 1998	Nov. 17, 1998	48	Nov. 30, 1998*
May 19, 1998	22	May 29, 1998	Nov. 24, 1998	49	Dec. 4, 1998
May 26, 1998	23	June 5, 1998	Dec. 1, 1998	50	Dec. 11, 1998
June 2, 1998	24	June 12, 1998	Dec. 8, 1998	51	Dec. 18, 1998
June 9, 1998	25	June 19, 1998	Dec. 15, 1998	52	Dec. 28, 1998*
June 16, 1998	26	June 26, 1998	Dec. 22, 1998	1	Jan. 4, 1999*
June 23, 1998	27	July 6, 1998*	Dec. 29, 1998	2	Jan. 8, 1999

Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

* Monday

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Business Enterprise Program: Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

- 2) Code Citation: 44 Ill Adm. Code 10

- 3) Section Numbers:

<u>Section Numbers:</u>	<u>Proposed Action:</u>
10.05	New
10.10	New
10.20	New
10.21	New
10.22	New
10.23	New
10.24	New
10.25	New
10.30	New
10.35	New
10.40	New
10.50	New
10.55	New
10.60	New
10.61	New
10.62	New
10.63	New
10.64	New
10.65	New
10.66	New
10.67	New
10.68	New
10.69	New
10.70	New
10.71	New
10.72	New
10.80	New
10.90	New
10.91	New
10.100	New

- 4) Statutory Authority: Public Act 90-572 [30 ILCS 500 and 525]

- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules would replace the current rules found at 44 Ill. Adm. Code 1 with a new set of rules that we have reorganized and revised to better reflect current practices.

- 6) Will this rulemaking replace any emergency rulemaking currently in effect?
No

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this rulemaking contain incorporations by reference? No

- 9) Are there any other proposed rulemakings pending on this Part? 44 Ill. Adm. Code 1, which contains the current rules for this program, is being repealed. There are three rulemakings taking place in conjunction with the repeal--this rulemaking, one to revise the general procurement rules and one to revise the real estate rules.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments within 45 days after the date of publication to:

Stephen W. Seiple
720 Stratton Office Building
Springfield, IL 62706
217/782-9669

We will consider all written comments. We will be able to consider all comments received by June 15, 1998, before we adopt the rules under emergency procedures.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: All types of small businesses and certain not-for-profit corporations

B) Reporting, bookkeeping or other procedures required by compliance: Certification process will require that vendors provide information to substantiate compliance with the requirements of the Act.

C) Types of professional skills necessary for compliance: None

These rules will particularly affect small businesses as most businesses interested in the Business Enterprise Program are small. We encourage small businesses and not-for-profit entities to comment.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the two most recent agendas because: The law creating the need for rulemaking was not signed until February 6, 1998.

The full text of the Proposed Rules begins on the next page:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENTS, AND PROPERTY MANAGEMENT
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 10

BUSINESS ENTERPRISE PROGRAM: CONTRACTING WITH BUSINESSES OWNED
AND CONTROLLED BY MINORITIES, FEMALES AND PERSONS WITH DISABILITIES

SUBPART A: GENERAL

Section
10.05 Introduction
10.10 Definitions

SUBPART B: GOAL AND GOAL MEASUREMENT

Section
10.20 Goal
10.21 Contracts and Expenditures Subject to the Goal
10.22 Categories of Contracts and Expenditures Exempt from Goal
10.23 Council Review of Agency Requests for Specific Exemptions
10.24 Goal Measurement
10.25 Subcontracting

SUBPART C: AGENCY COMPLIANCE AND REPORTING

Section
10.30 Agency Compliance
10.35 Professional and Artistic Contract Reporting

SUBPART D: PROGRAM ELIGIBILITY

Section
10.40 Program Eligibility

SUBPART E: CERTIFICATION

Section
10.50 General
10.55 List of Certified Businesses

SUBPART F: CERTIFICATION REQUIREMENTS AND PROCEDURES

Section
10.60 Application
10.61 Applicant Requirements
10.62 Time to Determine Eligibility

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

10.63 Certification by Other Certifying Entities
 10.64 \$14,000,000 Sales Limitation; Exception
 10.65 Citizenship/Permanent Residency
 10.66 Ownership/Control by Members of Eligible Groups
 10.67 Ownership
 10.68 Control
 10.69 Notice of Certification or Denial

SUBPART G: RECONSIDERATION, DECERTIFICATION AND RECERTIFICATION

Section
 10.70 Review and Reconsideration
 10.71 Decertification Process
 10.72 Recertification Process

SUBPART H: SPECIAL ASSISTANCE FOR CERTIFIED BUSINESSES

Section
 10.80 Special Assistance

SUBPART I: CONTRACT REQUIREMENTS

Section
 10.90 Change in Eligibility
 10.91 Contract Commitment; Good Faith Effort

SUBPART J: VIOLATIONS BY VENDOR

Section
 10.100 Violations by Vendor

AUTHORITY: Implementing and authorized by the Business Enterprise for Minorities, Females and Persons with Disabilities Act [30 ILCS 575].

SOURCE: Adopted at 22 Ill. Reg. _____, effective _____,

SUBPART A: GENERAL

Section 10.05 Introduction

The Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575] (Act) establishes a goal that at least 12% of contracts awarded by State agencies subject to the Act be awarded to businesses owned and controlled by minorities, females, or persons with disabilities. The Act also authorizes development and use of a procedure to certify firms eligible for the benefits of the Act, allows for certain special treatment in contracting with certified businesses, and establishes a Council, Secretary and, in the

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

Department of Central Management Services, a program function to implement and oversee the Act.

Section 10.10 Definitions

"BEP" or "Business Enterprise Program" means the activities conducted by the Council, Secretary and Department of Central Management Services pursuant to the Act.

"BEP eligible" or "BEP eligible vendor" means an MBE, FBE, or PBE.

"Council" means the public body established by the Act to implement and oversee implementation of the Business Enterprise Program.

"Eligible group member" means a person who meets the eligibility requirements set forth in Section 10.40(a) of this Part.

"FBE" means a business owned and controlled by females in accordance with the requirements of the Act and this Part.

"MBE" means a business owned and controlled by minorities in accordance with the requirements of the Act and this Part.

"PBE" means a business owned and controlled by persons with disabilities in accordance with the requirements of the Act and this Part.

"Secretary" means the individual appointed to act as Secretary to the Council and to be manager of the BEP Division of the Department of Central Management Services.

SUBPART B: GOAL AND GOAL MEASUREMENT

Section 10.20 Goal

Unless modified by resolution of the Council, the goal shall be 5% of contracts for MBEs, 5% for FBEs and 2% for PBEs.

Section 10.21 Contracts and Expenditures Subject to the Goal

All contracts funded in whole or in part with funds appropriated by the General Assembly are subject to the goal unless exempted elsewhere in this Part.

Section 10.22 Categories of Contracts and Expenditures Exempt from Goal

- a) Contracts shall be exempt from the goal if:
- 1) the contract is subject to federal reimbursement; or
 - 2) receipt of funds for a contract would be jeopardized by including

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- C) Burial Expense Awards;
 - D) Community Services for DMHDD and Chemically Dependent;
 - E) Court of Claims Awards;
 - F) Reimbursement for Living Expenses for State Wards Outside State Institutions;
 - G) Tuition, Training Supplies and Equipment for Aided Persons;
 - H) Lottery Prizes;
 - I) Interviewee Expenses; and
 - J) Tort Claims.
- 5) Debt retirement and refunds of money:
- A) Debt Retirement;
 - B) Loans; and
 - C) Refunds.
- 6) Grants:
- A) Grants for Educational Purposes - School Districts;
 - B) Grants for Educational Purposes - Higher Education;
 - C) Grants to Local Governments (Other);
 - D) Grants to Non-Profit Organizations;
 - E) Grants to Other State Agencies; and
 - F) Grants to or on behalf of Veterans and their Dependents.
- 7) Public utility contracts and payments:
- A) Electricity;
 - B) Gas (Natural Gas);
 - C) Telecommunications (regulated service only);
 - D) Water; and
 - E) Utilities (Other).
- 8) Real estate acquisition:
- A) Land (Relocation Costs);
 - B) Land, Relocation Costs (Highways);
 - C) Land, Relocation Costs (Waterways);
 - D) Land, Rights of Way and Easements;
 - E) Land, Rights of Way and Easements (Highway); and
 - F) Land, Rights of Way and Easements (Waterways).
- 9) Miscellaneous contracts and expenditures:
- A) Association Dues; and
 - B) Periodical Subscriptions.

c) Prior to the end of each fiscal year, the Secretary shall investigate the categories of contracts and expenditures to determine whether, based on the best information available, these categories continue to represent procurements where there are no opportunities for MBEs, FBES or PBES, or that there are not sufficient MBEs, FBES or PBES to ensure competition and an expectation of reasonable prices. The Secretary shall present the determination to the Council, and the Council shall either continue with the current categories or change the categories. The categories shall remain as stated in this Part until the Part is amended.

Section 10.23 Council Review of Agency Requests for Specific Exemptions

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

them in the Program.

b) The Council has determined, pursuant to Section 7(2) of the Act, that the following categories of contracts and expenditures, including but not limited to the detailed expenditure accounts listed below each category, are exempt from the goal. This determination was made based on the best information available that these categories do not represent procurement opportunities for MBEs, FBES or PBES, or that there are not sufficient MBEs, FBES or PBES to ensure competition and an expectation of reasonable prices. The detailed expenditure accounts have the same meaning as used by the State Comptroller (see Statewide Accounting Management System manual, formerly CUSAS, chapter 11, Expenditure Authority. A copy of this manual is available in the Secretary's office).

1) Contracts between, or within, State agencies that do not include payments to private vendors:

- A) University Central Data Processing Services;
- B) University Central Plant Services;
- C) University Central Supply Services;
- D) University Central Telecommunication Services; and
- E) University Central Transportation Services.

2) Contracts with or payments to other governmental entities:

- A) Payments to Local Governments for Employees;
- B) Reimbursements to Governmental Units;
- C) Postage and Postal Charges;
- D) Operating Taxes, Licenses and Fees;
- E) Revenue Stamps;
- F) Taxes and Transfers;
- G) Fire Protection Services;
- H) Shared Waterway Agreements; and
- I) Shared Revenue Payments.

- 3) Employee wages, salary and other payroll and employee related costs:
- A) Payments into Pension Funds;
 - B) Pensions, Annuities and Benefits;
 - C) Purchase of Investments;
 - D) Employee Tuition Fees;
 - E) Social Security;
 - F) Retirement;
 - G) Unemployment Compensation Payments;
 - H) Legislative Staff Services;
 - I) Registration Fees and Conference Expenses;
 - J) Industrial Commission Awards or Settlement Awards for Injured Employees; and
 - K) Awards, Benefits and Treatment Expenses - Injured Employees.
- 4) Payments of money to individuals or groups in the nature of reimbursement, settlement, entitlement, or assistance:
- A) Assistance Payments to Individuals;
 - B) Awards and Grants to Students;

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- a) Any State agency may request that the Council exempt specific contracts or expenditures from the goal. The agency must show, based on the best information available, that the particular contract does not represent a procurement opportunity for MBES, FBES or PBES, or that there are not sufficient MBES, FBES or PBES to ensure competition and an expectation of reasonable prices. The agency must provide a copy of any Invitation for Bids, Request for Proposals or other solicitation information issued, the amount of anticipated expenditures that would be exempt and the total agency appropriation. The documentation must show the agency engaged in a diligent effort to identify and solicit BEP eligible vendors, and the results of that effort.

- 1) A diligent effort requires, at a minimum, solicitation of appropriate vendors from the master vendor list maintained by the Council and advertising in appropriate media.
- 2) Whether the price quoted is reasonable shall be determined based upon current market prices, historic prices, prices received by other agencies for similar supplies or services, and the policy of the Business Enterprise Act to promote businesses owned by minorities, females and persons with disabilities.
- b) The Council shall exempt specific contracts from the goal if, after reviewing the information provided by the agency, it determines that the agency did make a diligent effort to contract with MBES, FBES and PBES and that the price was not reasonable. Any action by the Council to approve or deny a request for specific exemption shall be by resolution passed by the Council.

Section 10.24 Goal Measurement

- a) The goal shall be measured on a full fiscal year basis. The goal shall be measured against the total dollar amount of expenditures subject to the goal. Expenditures not covered are those described in Sections 10.22 and 10.23.
- b) Certain purchasing agencies, such as the Department of Central Management Services and the Capital Development Board, are responsible for establishing contracts for other (user) agencies. Those purchasing agencies shall be responsible for meeting the goal for such contracts even though the user agency may have the appropriation to fund the contract. To properly account for the goal in these situations, the following procedures shall be followed:
- 1) The user agency shall review its budget and subtract from its appropriation in each major or minor object code the amount it anticipates spending on contracts established by the purchasing agency. The purchasing agency shall report that amount to the Secretary.
 - 2) Those amounts reported by user agencies to the Secretary shall be assigned by the Secretary to the appropriate purchasing agency. Such amounts will be included in the amount upon which the

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

purchasing agency goal is based. This procedure does not result in money actually being transferred from the user agency to the purchasing agency. Rather, the transfer is for compliance plan accounting purposes only.

- 3) If a purchasing agency delegates procurement authority to a user agency, the purchasing agency's goal base shall be reduced in amount of the delegation and the user agency's goal base shall be increased in like amount.
- 4) If the user agency transfers money from a line subject to a purchasing agency's authority, the purchasing agency's goal base shall be reduced by that amount and the user agency's goal base shall be increased by the amount of the transfer.

Section 10.25 Subcontracting

An agency may satisfy its goal, in whole or in part, by counting expenditures made by State vendors to certified BEP vendors as subcontractors.

SUBPART C: AGENCY COMPLIANCE AND REPORTING

Section 10.30 Agency Compliance

- a) Each agency shall submit a compliance plan annually. The Council shall establish the format and timetable for submission of the plan. The Council shall approve the plan if it meets the requirements of the Act and this Part.
- b) The Council, on its own motion or upon request of a purchasing agency, shall recommend ways in which the purchasing agency may reach its goal. Upon a finding by the Council that a purchasing agency's compliance plan is insufficient to reach the agency's goal, the Council shall recommend ways in which the agency can reach its goal. Such recommendations may include, but shall not be limited to:
 - 1) using stronger and better focused solicitation efforts to obtain more BEP eligible businesses as potential sources of supply;
 - 2) division of ob or project requirements, when economically feasible, into smaller, more manageable, tasks or quantities;
 - 3) elimination of extended experience or capitalization requirements when programmatically feasible; and
 - 4) identification of specific proposed contracts as particularly attractive or appropriate for participation by BEP eligible businesses.
- c) If the compliance plans or quarterly reports indicate the agency's goal will not be reached, the Council may request the agency head to appear before the Council and explain the agency's non-compliance. If the Council determines the agency is not making a serious effort to reach the goal, the Council will prepare a report for submission to the Governor with recommendations for remedial action.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

Section 10.35 Professional and Artistic Contract Reporting

Agencies shall report to the Council, except in emergency situations, professional and artistic contracting opportunities. The report is required by Section 6a of the Act and shall be made as follows:

- a) The agency must give notice to the Council that it intends to enter into a professional and artistic contract on the same day that the potential vendor is first contacted. Notice may be mailed, hand delivered, sent by fax, or transmitted in electronic form.
- b) The notice shall include the agency name and address; contact person; contract reference number; date bid or proposal was first available; return dates and opening dates; term of the contract; services to be provided; special requirements; and dollar value. Notice may be given on the form available from the Secretary.
- c) If the professional and artistic contract is advertised in the Illinois Procurement Bulletin, the agency need not make a report to the Council.

SUBPART D: PROGRAM ELIGIBILITY

Section 10.40 Program Eligibility

- a) Businesses owned and controlled by individuals in the following eligible groups may submit applications for certification:

- 1) Black - a person having origins in any of the black racial groups in Africa.
- 2) Hispanic - a person of Spanish or Portuguese culture with origins in Mexico, South or Central American or the Caribbean (regardless of race).
- 3) American Indian or Alaskan Native - a person having origins in any of the original people of North America.
- 4) Asian American - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands.
- 5) Female - a person who is a citizen or lawful, permanent resident of the United States, and who is of the female gender.
- 6) Person with a disability.

- b) MBE, FBE and PBE refer to for-profit enterprises regardless of form of organization (sole proprietorship, partnership or corporation). However, not-for-profit entities that meet the definition of a sheltered workshop for the disabled in accordance with Section 45-35 of the Illinois Procurement Code [30 ILCS 500] will also be classified as PBE.

SUBPART E: CERTIFICATION

Section 10.50 General

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- a) The primary purpose of the certification process is to verify that the business is owned and controlled by BEP eligible individuals in accordance with requirements of the Act and this Part. The Secretary to the Council will oversee the certification process. The certification procedure consists of the requirements and procedures outlined in this Section.
- b) The Secretary will certify an applicant firm that meets all of the requirements of the Act and this Part. The Secretary will conduct a routine review and reconsideration of each certified business at least one time every three years to ensure continued eligibility.
- c) Only certified businesses are eligible for the benefits of the Program. Agencies may count only those expenditures with a certified vendor, or subcontractor, toward meeting the goal.
- d) A business owned and controlled by females shall be certified as a FBE regardless of the ethnicity of the female owners.
- e) For a business to qualify as MBE, only those minorities who are male may be counted in determining ownership and control.
- f) A business owned and controlled 50% by minority males and 50% by minority females is a MBE for purposes of the Act.
- g) A business owned and controlled at least 51% by any combination of minorities, females and persons with disabilities shall be counted as a business owned and controlled by the eligible group that has the largest percentage of ownership. When there is a tie, the business shall select the eligible group classification.
- h) A business owned and controlled by a person with a disability, or by an entity that is a not-for-profit agency for the disabled, is a PBE regardless of the ethnicity or gender of the owner or owners.
- i) These classifications facilitate consistent accounting of agency contract awards to businesses covered by the Act. These classifications do not preclude such businesses or not-for-profit agencies from receiving any contract that may be awarded under the Illinois Procurement Code [30 ILCS 500] or other applicable law.

Section 10.55 List of Certified Businesses

- a) The Secretary, on behalf of the Council, shall compile a list of businesses certified under the Act.
- b) The list will contain the name, address, phone/fax numbers, e-mail address, type of certification (MBE, FBE or PBE) and business classification (e.g., accounting or furniture sales) of certified vendors.
- c) The list shall be available to the Chief Procurement Officers and State Purchasing Officers established under the Illinois Procurement Code, and to other interested State agencies for use in procurements under the Illinois Procurement Code and other procurement laws.
- d) The list shall be available to the public. This list may be in the form of a directory available for a fee to cover cost of compilation, publication and distribution.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

SUBPART F: CERTIFICATION REQUIREMENTS AND PROCEDURES

Section 10.60 Application

The business seeking certification must complete a BEP application package. The Secretary may conduct a personal interview with the applicant that may include a telephone interview and/or an on-site visit. Additional on-site visits may be conducted at any time during the life of a certification to verify continued eligibility for the Program.

Section 10.61 Applicant Requirements

The applicant for initial certification, or recertification, must meet all of the requirements set forth in the Act and this Part. Should the applicant fail to meet any of the certification requirements, or refuse to supply information requested by the Secretary, the Secretary will deny certification or recertification.

Section 10.62 Time to Determine Eligibility

The Secretary shall attempt to make a decision whether to certify or deny certification within 60 days after receipt of all requested information.

Section 10.63 Certification by Other Certifying Entity

a) The Council will accept a certification by another entity in Illinois, such as a local government or vendor association. The other entity must have certification requirements and procedures equaling or exceeding those in the Act and this Part.

b) The Secretary shall investigate requirements and procedures of other certifying entities and shall report to the Council the names of those certifying entities whose certifications can be accepted.

1) The other entities must agree to notify the Secretary should their requirements or procedures change in any material way. The Secretary shall periodically meet with the other certifying entities to help ensure Council requirements and procedures are being met.

2) If the other entities' requirements or procedures no longer equal or exceed the requirements and procedures of the Act or this Part, the Council will no longer accept those certifications. However, the Council will continue to honor previously accepted certifications until the Secretary reviews each one and, if necessary, revokes those that do not meet the requirements of the Act and this Part.

Section 10.64 \$14,000,000 Sales Limitation; Exception

a) Annual gross sales of the applicant business for its most recent

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

fiscal year must be less than \$14 million.

1) In determining the annual gross sales, sales of any affiliated business shall also be counted.

2) An affiliated business is one related to the other by virtue of significant commonality of management, or commonality of ownership (at least 5% of one company owned by owner or management personnel of the other). Other factors that may be considered in determining affiliation include, but are not limited to, sharing of office space, workers or equipment.

b) A business with annual gross sales of \$14 million or more in its most recent fiscal year is eligible to participate in the program if the business can show that if it were to receive a particular contract or subcontract, there would be a significant impact on employment of minorities, females or persons with disabilities, or in the use of BEP certified subcontractors or suppliers.

1) For the impact to be significant in terms of employment, the business would have to hire new employees with a full time equivalence to 50% of their work force. In addition, at least 51% of those new hires must be minority, female or persons with disabilities.

2) For the impact to be significant in terms of use of subcontractors or suppliers, the business must direct 75% of the value of the contract to BEP certified vendors as subcontractors or suppliers.

If the business makes contractual commitments regarding hiring or use of subcontractors or suppliers, agrees to appropriate enforcement mechanisms, such as bonding or damage provisions, and meets the other requirements for certification, the Secretary, on behalf of the Council, will approve counting expenditures under that contract toward the agency's goal.

Section 10.65 Citizenship/Permanent Residency

a) The individuals claiming ownership and control of the applicant business must be citizens or lawful permanent residents of the United States.

b) Proof of citizenship or permanent residency must be confirmed by a birth certificate, naturalization papers, permanent resident status documents, passports or other documents.

Section 10.66 Ownership/Control by Members of Eligible Groups

a) The individuals claiming ownership and control of the applicant business must be members of the eligible groups identified in Section 10.40(a) of this Part.

b) The applicant must provide proof of eligible group status. Proof must be in the form of official documentation such as birth certificates, passports, naturalization papers, or Tribal I.D. Card, if available.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

If an individual does not have official documentation, or if it is not sufficient, the Secretary will consider other evidence the applicant submits. Other evidence might include whether the individual identifies with, holds him or herself out as part of, or others recognize him or her as belonging to, an eligible group.

Section 10.67 Ownership

a) The individuals claiming ownership and control of the applicant business must own at least 51% of the business.

b) The ownership shall be real, substantial and continuing and not simply a matter of form. "Real" is a bona fide investment in the business done at arm's length and in good faith. "Substantial" is the level of investment necessary to initiate or acquire the particular business in light of its value, the business field, the organization of the concern, and the potential sources of outside financing. The following factors, among others, help determine whether ownership is real, substantial, continuing and not a matter of form.

1) How ownership was obtained, including, but not limited to, purchase, gift or inheritance.

2) How substantial was the contribution toward ownership in terms of expertise, money, or other such factors? The following are some examples of factors that may indicate insufficient contribution:

- A) minimal cash outlay or personal investment;
- B) a promise or agreement to contribute capital;
- C) a note payable to the firm or other owners who are not eligible group members;
- D) contributions for services rather than capital, except where services are unique, specialized or of a value commensurate with the ownership value of such services;
- E) payment of contribution with funds loaned by a non-eligible group, former employer or stockholder;
- F) no recourse loans where the borrower assumes no liability for repayment upon default; and
- G) no recourse stock purchases wherein the purchaser assumes no liability upon default of payment other than transaction of shares.

3) How the applicant holds ownership. In terms of stock holdings, the following are factors that may indicate ownership is not as stated:

- A) minimal cash outlay or personal investment;
 - B) a promise or agreement to buy stock;
 - C) stock issued, but not purchased;
 - D) stock certificates purchased but not in the possession of the applicant; or
 - E) stock held in trust.
- 4) The applicant must provide documentary proof of ownership, including, but not limited to, the following:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- A) canceled checks or bookkeeping entries;
- B) signed purchase agreements;
- C) stock certificates, transfer ledgers and stockholder agreements;
- D) partnership agreements;
- E) profit sharing agreements; and
- F) buy-out-right agreements.

Section 10.68 Control

The individuals claiming ownership and control of the applicant business must actually control the applicant business. Those individuals must be in direct control of the day to day operations, and must have, and exercise, the power to make major decisions on management, policy, fiscal and operational matters. Ownership by eligible group members does not equate to control. At a minimum, the following factors will be considered in determining control.

a) Do the articles of incorporation show the eligible group owners were involved at the time of incorporation and in what way? If the eligible group owners were not involved at the time of incorporation, when did they become involved?

b) Corporate by-laws will be reviewed to determine:

- 1) the duties of the directors and officers who occupy these positions;
- 2) the voting rights of the shareholders; and
- 3) any restrictive language that may affect the eligible group owner's stock voting rights.

c) Are there any stock options/shareholders agreements that, if exercised, will dilute or eliminate eligible group owner control?

d) Do the eligible group owners make decisions independently?

e) Does a review of resumes show the eligible group owners have sufficient background, including education and training, for responsibilities assigned?

f) Do the eligible group owners continue to work for a firm not eligible for the BFP, and if so, what is the relationship of the firm to the applicant business?

g) Who in the firm negotiates contracts and loans, prepares estimates and makes other management and supervisory decisions?

Section 10.69 Notice of Certification or Denial

a) Notification of Certification

When the Secretary has determined that the applicant meets all requirements of the Act and this Part, the Secretary will notify the applicant by letter that it has been certified.

b) Notification of Denial of Certification

When the Secretary determines that the applicant does not meet the requirements of the Act and this Part, the Secretary shall send a letter to the applicant setting forth the rationale for the

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

determination, inviting the applicant to provide additional information in the areas of concern and advising the applicant of the review process. The Secretary shall remove the applicant from the list of certified vendors.

SUBPART G: RECONSIDERATION, DECERTIFICATION AND RECERTIFICATION

Section 10.70 Review and Reconsideration

- a) The applicant may request that the Secretary reconsider a certification denial. The Secretary shall inform the applicant of the reconsideration decision within three months after receipt of the request for reconsideration. If the decision is not favorable to the applicant, the Secretary shall inform the applicant of additional reviews that are available. If the Secretary fails to inform the applicant within the three month period, the reconsideration request will be considered denied.
- b) The applicant may request that the Council's Certification Committee, made up of at least three Council members appointed by the Council's chair, review the reconsideration decision of the Secretary. The applicant must submit this request in writing to the Secretary postmarked no later than 30 days after the applicant received the Secretary's decision. The request must state why the applicant believes the Secretary's decision is wrong, must address all points raised in the Secretary's decision and must include any supporting documentation.
- c) The Secretary will attempt to schedule a Committee meeting within 30 days after receipt of the request for review. The meeting shall be held in Springfield or Chicago unless the Committee agrees to meet at some other location. The Secretary will notify the applicant at least 10 days prior to the meeting of the location, date and time.
- d) The Secretary shall provide each Committee member with a copy of the request for review, other relevant information and a response to the points raised in the request for review. Each Committee member shall review the files prior to the meeting.
- e) The Committee Chair shall call the meeting to order, announce the matter at issue and explain the meeting procedures. The Chair shall briefly restate the reasons given for the Secretary's decision and open the floor to the applicant. The meeting shall proceed in an informal manner within these procedures. All information obtained shall be considered.
- f) The applicant may make an opening statement, but must respond to each of the reasons given in the Secretary's decision. The applicant may call and question any witnesses. The Committee may ask questions of the applicant, the Secretary or any other person present. The Secretary may comment at any time. When the applicant is finished the Secretary may call witnesses. Both applicant and Secretary may make closing statements. Although the applicant may have an attorney or

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

other representatives assist at the meeting, applicant must be present if any representative is present and applicant must respond to questions of the Committee.

- g) The Committee shall consider the information obtained at the meeting either as a body or individually. The Committee's decision will be based upon majority vote.
- h) If the decision is favorable to the applicant, the Secretary will notify and place the applicant on the list of certified vendors. If the decision is adverse to the applicant, the Secretary will notify the applicant, providing the Committee's reasons and information on the further review that is available.
- i) The applicant may ask that the full Council review an adverse decision of the Certification Committee. The applicant must submit this request in writing to the Secretary. The request must be postmarked no later than 15 days after the applicant received the Committee's decision. This request must state why the applicant believes the Committee's decision is wrong, must address all points raised in the Committee's decision and must include any supporting documentation.
- j) The Secretary shall provide each Council member with a copy of the second request and a copy of the Secretary's file on the matter for review. In addition, the Secretary shall prepare and submit to the Council a draft response to the points raised in the second request for review. The Secretary shall consult with the Committee prior to submitting the draft.
- k) The Council shall consider the second request at the next regularly scheduled Council meeting provided that the second request was received by the Secretary at least 21 days prior to that Council meeting. If received after that time, the matter will be considered at the next following Council meeting. The applicant will be told of the location, date and time of the meeting.
- l) The Council shall consider only the written information provided or produced by the applicant, the Certification Committee and the Secretary. The Council may, on its own, request that the applicant address the Council or respond to specific questions. If the Council requests that the applicant be present, the applicant may have an attorney or other representative assist at the meeting, but the applicant must be available to respond to Council questions. The Council will allow the applicant to address the Council if the applicant makes that request as part of the second request.
- m) After reviewing all information obtained, the Council shall vote to uphold the Committee's decision, overturn the Committee's decision or have the matter sent back to the Committee for reconsideration with instructions from the Council.
- n) If the decision is favorable to the applicant, the Council shall inform the Secretary. The Secretary shall place the applicant on the list of certified vendors. The Secretary shall inform the applicant.
- o) If the decision is adverse to the applicant, the Council shall inform the Secretary. The Secretary shall notify the applicant.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- r) If the decision is to send the matter back to the Committee, the process shall continue from that point until resolved at the Committee or Council level.

Section 10.71 Decertification Process

- a) The State, or a third-party, may challenge the certification status of a business at any time.
- b) Upon receipt of information that questions the validity of a certification, the Secretary shall conduct an investigation. This may include on-site or telephone interviews, review of existing records, or collection and examination of new records to supplement, explain or clarify records previously submitted.
- c) If the investigation results in a finding that the firm is no longer eligible for BEP status, the Secretary shall notify the firm that it is decertified. The applicant may appeal using the review and reconsideration procedure of Subpart G. After decertification, the applicant may not reapply for certification until one year has passed since the date of decertification. A certification of the applicant by another entity shall not be accepted during the one year period following decertification.

Section 10.72 Recertification Process

- a) Sixty days prior to expiration of the certification, the Secretary shall send a letter to the business advising that it must complete and return the application. The application must be postmarked at least 15 days prior to expiration of the current certification. Failure to meet that deadline shall result in expiration of the certification.
- b) If the applicant submits the material 15 days before the expiration of the current certification, the original certification shall remain in effect until the Secretary completes the recertification process.
- c) Upon receipt of the recertification application, the Secretary will review it for changes that affect eligibility under the Act or this Part.
- d) If no such changes have occurred, the Secretary will recertify the applicant. If changes give rise to questions regarding eligibility, the Secretary will notify the applicant and request clarification and/or additional information.
- e) When all questions of eligibility have been resolved in favor of the applicant, the Secretary will issue a new certification valid for a period of one year.
- f) If the Secretary determines that the firm is not eligible, the Secretary will notify the applicant by letter. The letter shall include the reasons for the decision and shall inform the applicant of the review and reconsideration process.

SUBPART H: SPECIAL ASSISTANCE FOR CERTIFIED BUSINESSES

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

Section 10.80 Special Assistance

- a) Purchasing agencies may waive or reduce bond requirements for certified vendors when allowed by law and when the reduced bond amount would adequately protect the State's interests.
- b) Purchasing agencies may enter into contracts with certified vendors that contain a provision allowing advance or progress payments or both, except that a construction contract may not contain an advance payment provision. The advance or progress payment provision may be added to a contract at any time by agreement of the parties. Agencies must consider the application of Section 9.05 of the State Finance Act [30 ILCS 105/9.05] before including such provisions in contracts.
- c) With the prior general approval of the Council, the Chief Procurement Officer (Director of the Department of Central Management Services) may, by express written authorization, allow purchasing agencies to establish set-asides and other such preferences for BEP certified vendors.

SUBPART I: CONTRACT REQUIREMENTS

Section 10.90 Change in Eligibility

- a) Any contract awarded with Section 10.80 provisions may not be assigned to another vendor without approval of the Secretary.
- b) Should a vendor who received a contract with Section 10.80 provisions cease to qualify as a BEP vendor during contract performance, the purchasing agency may cancel the contract immediately without penalty to the State.
- c) Any change in the eligibility status of a vendor shall be reported to the Council by both the vendor and the purchasing agency.

Section 10.91 Contract Commitment; Good Faith Effort

- a) A vendor who obtains a contract requiring hiring of BEP certified vendors, such as pursuant to Section 10.64, or who makes a voluntary contractual commitment to hire BEP certified vendors, and who fails to do so, is subject to having the contract canceled. If the agency cancels the contract, the vendor may be liable for any damages the State suffers as a result of the cancellation. The State may excuse the vendor's failure if the vendor can show a good faith effort to remain in compliance.
- b) Any vendor claiming good faith relief must fully document, in writing, the steps taken to obtain BEP certified vendors as subcontractors. The State may require that the vendor provide additional information on request. A good faith effort shall, at a minimum, consist of the following:
- 1) contacting the Business Enterprise Division at least 15 days prior to need and requesting referrals from the certified vendor

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- list and from any other list maintained by the Division;
- 2) advertising in the Official State Newspaper or a local newspaper as time permits; and
 - 3) contacting appropriate organizations such as unions, contractor associations, and minority or female oriented organizations.
- c) If a good faith exception is given, the purchasing agency shall notify the Secretary of the exception and shall include all pertinent information.

SUBPART J: VIOLATIONS BY VENDOR

Section 10.100 Violations by Vendor

Should a vendor violate the Act, this Part, or the terms of contracts let pursuant to this Program, the State may pursue any or all of the following actions.

- a) A certified vendor may be decertified and an applicant for certification may be denied certification for reasons including, but not limited to:
 - 1) refusal to supply information sufficient for the Secretary or the Council to make a determination for eligibility or continued eligibility as indicated in Section 10.61 (Applicant Requirements);
 - 2) refusal to supply additional proof of eligibility for the Program, particularly after receiving a contract with Section 10.80 (Special Assistance) provisions;
 - 3) accepting a contract with Section 10.80 (Special Assistance) provisions when the vendor does not qualify for the Program; and
 - 4) any other violation of the Act or this Part.
- b) The State may cancel, without penalty to the State, any contract entered into by a vendor in knowing violation of:
 - 1) the Act or this Part;
 - 2) the requirements of a contract let with Section 10.80 (Special Assistance) provisions; or
 - 3) commitments regarding use of certified vendors, including, but not limited to, those in Section 10.64 (\$14,000,000 Sales Limitation; Exception) and Section 10.91 (Contract Commitment; Good Faith Effort).
- c) In the case of a cancellation under subsection (b)(2) or (b)(3), the amount of profit applicable to amounts paid to the vendor shall be withheld from any amounts owed to the vendor. If the amount owed the vendor is insufficient to off-set profits, the vendor shall be liable to pay back to the State any balance of those profits. The profit rate shall be deemed 20% unless a lesser or greater amount can be conclusively proved.
- d) The Secretary may suspend a vendor for a period of no more than one year for a knowing violation of:
 - 1) the Act or this Part;

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED RULES

- 2) the requirements of a contract let with Section 10.80 (Special Assistance) provisions; or
 - 3) commitments regarding use of certified vendors, including, but not limited to, those in Section 10.64 (\$14,000,000 Sales Limitation; Exception) and Section 10.91 (Contract Commitment; Good Faith Effort).
- e) Depending on the seriousness of the violation, the suspension shall be:
- 1) from participation in the BEP program; or
 - 2) from further contracting with the State.
- f) A vendor may appeal any of the actions taken pursuant to this Section in the same manner as a vendor denied certification (see Subpart G of this Part).
- g) The Secretary shall notify the Chief Procurement Officers, State Purchasing Officers and other interested parties of the revocation of certification or of suspension.
- h) If any agency finds or suspects that a business is in violation of the Act or of this Part, such violation should be reported to the Secretary as soon as practicable after the finding.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

1) Heading of the Part: Standard Procurement2) Code Citation: 44 Ill. Adm. Code 11203) Section Numbers: Proposed Action:

1120.01 New
 1120.05 New
 1120.08 New
 1120.10 New
 1120.15 New
 1120.25 New
 1120.525 New
 1120.1002 New
 1120.1510 New
 1120.1560 New
 1120.1570 New
 1120.25 New
 1120.2010 New
 1120.2012 New
 1120.2015 New
 1120.2020 New
 1120.2025 New
 1120.2030 New
 1120.2035 New
 1120.2036 New
 1120.2037 New
 1120.2038 New
 1120.2040 New
 1120.2043 New
 1120.2044 New
 1120.2045 New
 1120.2046 New
 1120.2047 New
 1120.2050 New
 1120.2055 New
 1120.2060 New
 1120.2560 New
 1120.2800 New
 1120.4005 New
 1120.4505 New
 1120.4510 New
 1120.4530 New
 1120.4535 New
 1120.4540 New
 1120.4545 New
 1120.5013 New
 1120.5015 New

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

1120.5020 New
 1120.5030 New
 1120.5035 New
 1120.5310 New
 1120.5510 New
 1120.5520 New
 1120.5530 New
 1120.5540 New
 1120.5550 New
 1120.6010 New
 1120.6500 New
 1120.6510 New
 1120.6520 New
 1120.7000 New
 1120.7010 New
 1120.7015 New
 1120.7020 New
 1120.7025 New
 1120.7030 New

4) Statutory Authority: Public Act 90-572, Section 1-30, effective July 1, 1998 [30 ILCS 25/1-30]5) A Complete Description of the Subjects and Issues Involved: Section 1-30 of the Illinois Procurement Code requires that constitutional officers procure their needs in a manner substantially in accordance with the requirements of the Code, and that such officers promulgate rules no less restrictive than the requirements of the Code to govern procurements.

This rulemaking prescribes standard procurement rules for the Office of the Comptroller in accordance with the requirements of the Illinois Procurement Code.

6) Will these proposed rule replace an emergency rule currently in effect?
No7) Does this proposed rulemaking contain an automatic repeal date? No8) Does this proposed rule contain incorporations by reference? No9) Are there any other proposed amendments pending in this Part? No10) Statement of Statewide Policy Objectives (if applicable): These proposed rules do not affect units of local government.11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. Written comments

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

may be submitted within 45 days after the publication of this notice to:

Keith J. Flanagan
Office of the Comptroller
201 State Capitol Building
Springfield IL 62706-0001
217/782-5328

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses and not-for-profit corporations that will be affected are those that seek to provide goods and services, including equipment, supplies and professional and artistic services, to the Office of the Comptroller.

B) Reporting, bookkeeping or other procedures required for compliance: Each contractor and subcontractor is required to maintain books and records relating to performance of the contract or subcontract and necessary to support amounts charged to the State for a period of 3 years from the later of the date of final payment under the contract or subcontract or completion of the contract or subcontract.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This Rule was not included on regulation agendas because: Public Act 90-572, which authorizes the rulemaking, was signed into law on February 6, 1998.

The full text of the proposed rule begins on the next page:

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENTS AND PROPERTY
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XIV: COMPTROLLER

PART 1120
STANDARD PROCUREMENT

SUBPART A: GENERAL

Section	Title
1120.01	Policy
1120.05	Illinois Procurement Code
1120.08	Application
1120.10	Definitions of Terms Used in this Part
1120.15	Property Rights
1120.25	

SUBPART B: PROCUREMENT RULES

Section	Rules
1120.525	

SUBPART C: PROCUREMENT AUTHORITY

Section	Conduct of Procurements
1120.1002	

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section	Illinois Procurement Bulletin
1120.1510	Supplemental Notice
1120.1560	Error in Notice
1120.1570	Direct Solicitation
1120.1580	

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section	General Provisions
1120.2005	Competitive Sealed Bidding
1120.2010	Multi-Step Sealed Bidding
1120.2012	Competitive Sealed Proposals
1120.2015	Small Purchases
1120.2020	Sole Economically Feasible Source Procurement
1120.2025	Emergency Procurements
1120.2030	Competitive Selection Procedures for Professional and Artistic Services
1120.2035	Other Methods of Source Selection
1120.2036	

OFFICE OF THE COMPTROLLER
NOTICE OF PROPOSED RULES

1120.2037 Tie Bids and Proposals
1120.2038 Mistakes
1120.2040 Cancellation of Solicitations; Rejection of Bids or Proposals
SUBPART F: SUPPLIERS, PREQUALIFICATION, AND RESPONSIBILITY

Section
1120.2043 Suppliers
1120.2044 Vendor Lists
1120.2045 Prequalification
1120.2046 Responsibility
SUBPART G: BID, PROPOSAL, AND PERFORMANCE SECURITY

Section
1120.2047 Security Requirements

SUBPART H: SPECIFICATIONS AND SAMPLES

Section
1120.2050 Specifications

SUBPART I: CONTRACT TYPE

Section
1120.2055 Types of Contracts

SUBPART J: DURATION OF CONTRACTS

Section
1120.2060 Duration of Contracts - General

SUBPART K: CONTRACT MATTERS

Section
1120.2560 Prevailing Wage

SUBPART L: CONTRACT PRICING

Section
1120.2800 All Costs Included

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section
1120.4005 Real Property Leases and Capital Improvement Leases

SUBPART O: PREFERENCES

OFFICE OF THE COMPTROLLER
NOTICE OF PROPOSED RULES

Section
1120.4505 Procurement Preferences
1120.4510 Resident Bidder Preference
1120.4530 Correctional Industries
1120.4535 Sheltered Workshops for the Disabled
1120.4540 Gas Mileage
1120.4545 Small Business

SUBPART P: ETHICS

Section
1120.5013 Conflicts of Interest
1120.5015 Negotiations for Future Employment
1120.5020 Exemptions
1120.5030 Revolving Door
1120.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

SUBPART Q: CONCESSIONS

Section
1120.5310 Concessions

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section
1120.5510 Complaints Against Vendors
1120.5520 Suspension
1120.5530 Settlement and Resolution of Contract and Breach
1120.5540 Violation of Statute or Rule
1120.5550 Protests

SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section
1120.6010 Supply Management and Dispositions

SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section
1120.6500 General
1120.6510 State Use of Other Contracts
1120.6520 No Agency Relationship

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section
1120.7000 Severability
1120.7010 Government Furnished Property

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

1120.7015 Inspections
 1120.7020 Records and Audits
 1120.7025 Written Determinations
 1120.7030 No Waiver of Sovereign Immunity

AUTHORITY: Implementing and authorized by Section 1-30 of the Illinois Procurement Code [30 ILCS 500/1-30].

SOURCE: Adopted at 22 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1120.01 Title

This Part may be cited as the Comptroller's Procurement Rules.

Section 1129.05 Policy

All procurements for the Office of the Comptroller (IOC) shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with statute, this Part and other applicable rules.

Section 1120.08 Illinois Procurement Code

Articles 1, 15, 20, 25, 35, 40, 45, 50, and 53 of the Illinois Procurement Code [30 ILCS 525/Arts. 1, 15, 20, 25, 35, 40, 45, 50, and 53] (the Code) will be referenced in this Part as though applicable to the IOC, and needs shall be procured in a manner substantially in accordance with those provisions of the Code, except to the extent otherwise provided in this Part. For purposes of this Part, any reference in the Code or this Part to the Chief Procurement Officer (CPO) means the Comptroller or his/her designee. The Comptroller may appoint one or more State Purchasing Officers (SPOs).

Section 1120.10 Application

- a) The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998.
- b) Procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.
- c) A solicitation occurs on or before June 30, 1998, as follows:
 - 1) When advertising was required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.
 - 2) When advertising was not required:
 - A) but if the procurement was advertised, the first

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

advertisement must have run no later than June 30, 1998;
 B) if the procurement was by direct solicitation by mail, the solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998;
 C) if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;

D) if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the individual who made the solicitation must state in writing when the procurement was discussed, and must name the party with whom the discussion took place.

3) In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest is not considered a solicitation.

d) This Part shall not apply to:

- 1) agreements among governments, or between State governmental bodies, except as specifically provided in the Code;
- 2) grants;
- 3) hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;
- 4) collective bargaining contracts;
- 5) purchase of real estate; or
- 6) contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the Comptroller's chief legal counsel shall give prior approval.

Section 1120.15 Definitions of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and that allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

items by manufacturers' names or catalogue numbers.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Contract" - A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: goods or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds issued by or on behalf of any State agency, or contracts, other than for "concessions", where the State agency signs, but has no financial obligation to the other parties.

"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"DCMS" - The Department of Central Management Services.

"IOC" - The Office of the Comptroller.

"Procurement Officer" - The CPO, appropriate SPO, or a designee of either who is charged with conducting a particular procurement.

"Proposal" - The response to a Request for Proposals.

"Qualified Products List" - An approved list of supplies, services, or construction items, described by model or catalogue numbers, that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Specification" - Any description of the physical, functional, or performance characteristics of, or of the nature of, a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements.

Section 1120.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto, or other offer confers no right to receive an award or contract, nor does it obligate the State in any manner.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

SUBPART B: PROCUREMENT RULES

Section 1120.525 Rules

To the extent practicable, the IOC may avail itself of master, scheduled or open-ended contracts established by DCMS; items available from the Paper and Printing Warehouse; and DCMS contracts for telecommunications equipment, software and services, paper and envelopes, and vehicles and vehicle services. The CPO or SPO may submit purchase requests to DCMS in accordance with rules promulgated by DCMS.

SUBPART C: PROCUREMENT AUTHORITY

Section 1120.1002 Conduct of Procurements

The Comptroller or his/her designee shall serve as CPO for purposes of the Code and this Part and may conduct any or all procurements on behalf of the IOC. The CPO may appoint one or more SPOs to conduct procurement in accordance with the terms of the appointment and this Part.

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 1120.1510 Illinois Procurement Bulletin

Notice of any procurement action required by the Code to be publicized in the Illinois Procurement Bulletin will be forwarded to DCMS for inclusion in the appropriate volume of the Bulletin in accordance with rules promulgated by DCMS (44 Ill. Adm. Code 1).

Section 1120.1560 Supplemental Notice

Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the IOC.

Section 1120.1570 Error in Notice

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin.

Section 1120.1580 Direct Solicitation

In addition to giving notice in the Bulletin, the IOC may directly contact prospective vendors. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information. When making direct solicitations, at least three vendors should be contacted.

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

Section 1120.2005 General Provisions

- a) Late Bids or Proposals, Late Withdrawals and Late Modifications.
 - 1) Definition. Any bid or proposal received after the time and date for receipt, or at other than the specified location even if on time, is late. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals is late.
 - 2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless it would have been timely but for the action or inaction of IOC personnel directly serving the procurement activity (e.g., providing the wrong address).
 - 3) Records. Records shall be made and kept for each late bid or proposal, late modification, or late withdrawal.
 - 4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.
- b) Extension of Time.
 - 1) The date or time for submitting a bid or proposal or modifying or withdrawing a bid or proposal may be extended by the IOC prior to such date or time for the convenience of the IOC. Reasons for extension include, but are not limited to, allowing additional time for submissions to account for inclement weather, labor strikes, accidents and other such reasons.
 - 2) After opening bids or proposals, the CPO or SPO may request bidders or offerors to extend the time during which the IOC may accept bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.
- c) Electronic and Facsimile Submissions.
 - 1) The Invitation for Bids (IFB) or Request for Proposals (RFP) may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the IFB or RFP.
 - 2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
 - 3) Fax submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
- d) Intent to Submit.

The Invitation for Bids or the Request for Proposals may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the IFB or RFP. Bids and

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- e) proposals submitted without complying with the notice of intent requirement may be rejected.

Only One Bid or Proposal Received.

If only one bid or proposal is received, an award may be made to the single bidder or offeror if the CPO or SPO finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:

 - 1) new bids or offers may be solicited;
 - 2) the procurement may be canceled; or
 - 3) if the CPO or SPO determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted with any vendor under Section 1120.2025 (Sole Economically Feasible Source Procurement) or Section 1120.2030 (Emergency Procurements), as appropriate. The CPO or SPO shall attempt to negotiate the price to a more acceptable level.
- f) Alternate or Multiple Bids or Proposals.
 - 1) Alternate bids or proposals may be accepted if:
 - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
 - B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 1120.2025 (Sole Economically Feasible Source Procurement) of this Part; or
 - C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications; or
 - D) a vendor clearly indicates a primary submission, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.
 - 2) Multiple bids or proposals may be accepted if:
 - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
 - B) only one vendor responded, one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.
- g) Multiple Items.

An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.
- h) "All or None" Bids or Proposals.

"All or none" bids or proposals may be accepted if the evaluation shows an all or none award to be in the State's best interest.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- i) Conditioning Bids or Proposals Upon Other Awards.
Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:
- 1) be rejected unless the vendor removes the condition; or
 - 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other IFBs or RFPS, provided the agency need not delay procurement actions to accommodate the vendor's all or none condition.

j) Unsolicited Offers.

- 1) Processing of Unsolicited Offers. The CPO or the SPO may consider unsolicited offers and shall have final authority with respect to evaluation, acceptance and rejection of such unsolicited offer.
- 2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the State.
- 3) Evaluation. The unsolicited offer may be evaluated to determine its utility to the State and whether it would be to the State's advantage to enter into a contract based on such offer. An unsolicited offer that meets the requirements set forth above may be considered for award if the procurement also meets the requirements of Section 1120.2025 (Sole Economically Feasible Source Procurement) or Section 1120.2020 (Small Purchases), in which case those procedures shall be followed as applicable.
- 4) Confidentiality. Any request for confidentiality of data contained in an unsolicited offer must be made in writing. If agreement cannot be reached on confidentiality, the IOC shall reject the unsolicited offer.

k) Clarification of Bids and Proposals.

The IOC may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to change its bid or proposal in response to a request for clarification.

l) Extension of Time on Indefinite Quantity Contracts.

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the CPO or the SPO determines in writing that it is not practical to award another contract at the time of such extension. A clarification is not an opportunity for discussion or for submission of best and finals as authorized elsewhere in this Part.

m) Increase in Quantity on Definite Quantity Contracts.

- 1) The quantity that may be ordered from a definite quantity contract may be increased by up to 20% provided the CPO or SPO determines that separate bidding for the additional quantity is not likely to achieve lower pricing.
- 2) The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the small purchase

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

threshold applicable to the type of good or service.

n) Novation or Change of Name.

- 1) Assignment. No IOC contract is transferable, or otherwise assignable, without the written consent of the CPO; however, a vendor may assign monies receivable under a contract after due notice to the IOC. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the IOC.
- 2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:
 - A) the transferee assumes all of the transferor's obligations;
 - B) the transferee meets all requirements for contracting with the State;
 - C) the transferor waives all rights under the contract as against the IOC; and
 - D) by the transferee, the transferee performance of the contract IOC, furnish a satisfactory performance bond.
- 3) Change of Name. When a vendor requests to change the name in which it holds a contract with the IOC, the CPO shall, upon receipt of a document indicating such change of name, enter into an agreement with the requesting vendor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- o) Contracting for Installment Purchase Payments, Including Interest. Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including 30 ILCS 305.

Section 1120.2010 Competitive Sealed Bidding

a) Application.

Competitive sealed bidding is the required method of source selection, except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

b) The Invitation for Bids.

- 1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.
- 2) Content. The Invitation for Bids shall include, at a minimum, the following:
 - A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

State, and any other special information;

B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

c) Bidding Time.

Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.

d) Bidder Submissions.

1) Bid Form. The Invitation for Bids may provide a form that shall include space in which the bid price shall be inserted and that the bidder shall sign and submit along with all other necessary submissions.

2) Bid Samples and Descriptive Literature.

A) Bid samples or descriptive literature may be required when necessary to evaluate required characteristics of the items bid.

B) Unsolicited bid samples or descriptive literature is submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.

e) Public Notice.

1) Publication. Every procurement for goods and services in excess of \$10,000 that must be procured using an Invitation for Bids shall be publicized in the Illinois Procurement Bulletin.

2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.

3) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall indicate where Invitations for Bids may be obtained; generally describe the supply or service desired; and indicate the due date for bids; and may contain other appropriate information. When appropriate, the SPO may require payment of a fee or a deposit for supplying the Invitation for Bids.

f) Pre-Bid Conference.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

A pre-bid conference may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as a part of the Invitation for Bids notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendment shall be supplied to attendees only.

g) Amendments to Invitations for Bids.

1) Form. Amendments to Invitations for Bids shall be clearly identified and shall reference the portion of the IFB they amend.

2) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.

3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

h) Pre-Opening Modification or Withdrawal of Bids.

1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. A fax modification or withdrawal, or withdrawal received by telephone prior to the time and date set for bid opening, will be effective if followed in writing.

2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

i) Receipt, Opening and Recording of Bids.

1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

2) Opening and Recording.

A) Bids and modifications shall be opened publicly at the time, date, and place designated in the Invitation for Bids. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

such other information as is deemed appropriate by the SPO shall be recorded and the name of each bidder read aloud or otherwise made available. The names of witnesses shall also be recorded at the opening.

- B) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.
- 3) Confidential Data. The SPO shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award.

- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.
- 2) Responsibility. Responsibility of prospective vendors is covered by Section 1120.2046 (Responsibility) of this Part.
- 3) Responsiveness. A bid must conform in all material respects to the Invitation for Bids.

- A) Product or Service Acceptability. The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:
- i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
 - ii) examination of such elements as appearance, finish, taste, or feel;
 - iii) other examinations to determine whether the product or service conforms with any other purchase description requirements.

- B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

(j), bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the IOC has available concerning future use and shall treat all bids equitably. Pricing for optional supplies or services, or for renewal terms, shall not be considered.

5) Price Negotiation. This Section permits negotiations with the low bidder to obtain a lower price for the item bid.

k) Documentation of Award.

Following award, a record showing the successful bidder shall be made a part of the procurement file.

l) Award to Other Than Low Bidder.

The SPO may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. The name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin.

m) Publicizing Award.

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1120.2020 (Small Purchases), notice of award shall be published in the Bulletin.

Section 1120.2012 Multi-Step Sealed Bidding

- a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the IOC, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:
- 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
 - 2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.

- c) Pre-Bid Conferences in Multi-Step Sealed Bidding. Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 1120.2010(f) (Pre-Bid Conferences) may be conducted by the SPO.

- d) Procedure for Phase One of Multi-Step Sealed Bidding.

1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 1120.2010 (Competitive Sealed Bidding), except as provided in this Section. In addition to the requirements set forth in Section 1120.2010, the multi-step Invitation for Bids shall state:

- A) that unpriced technical offers are requested;
- B) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;
- C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- D) the criteria to be used in the evaluation of the unpriced technical offers;
- E) that the IOC, to the degree the SPO finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

- 2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the SPO, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids may be canceled in accordance with Section 1120.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) and a new Invitation for Bids issued.

- 3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

- 4) Evaluation of Unpriced Technical Offers. The unpriced technical

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable, in which case the SPO shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The SPO may initiate phase two of the procedure if, in the SPO's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the SPO finds that such is not the case, the SPO may commence discussions of the unpriced technical proposals.

- 5) Discussion of Unpriced Technical Offers. The SPO may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the SPO shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the SPO. Such submission may be made at the request of the SPO or upon the bidder's own initiative.

- 6) Unacceptable Unpriced Technical Offer. When the SPO determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

- e) Procedure for Phase Two.

- 1) Initiation. Upon the completion of phase one, the SPO shall either:

- A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
- B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

- 2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except:

- A) no public notice need be given of this invitation to submit priced bids because such notice was previously given;
- B) after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The SPO shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the SPO shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- the disclosure of confidential data; and
- C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

Section 1120.2015 Competitive Sealed Proposals

- a) Competitive sealed proposals may be used whenever permitted by the Code and as described in this Section.
- b) The competitive sealed proposal method of source selection may be used to procure the following categories:
- 1) electronic data processing equipment, software, and services;
 - 2) telecommunications equipment, software, and services;
 - 3) consulting services; and
 - 4) employee benefits and management of those benefits.

- c) Competitive sealed proposals may be used on a case-by-case basis when it is determined that competitive sealed bidding is either not practicable or advantageous.

- 1) "Practicable" Distinguished from "Advantageous". As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and this Section, the term "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a procurement may be conducted by competitive sealed proposals, the SPO shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.

- 2) General Discussion.

- A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.
- B) The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:
 - i) it permits discussions with competing offerors and changes in their proposals, including price; and
 - ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

- C) When evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, when the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or when the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- A) whether the contract needs to be other than a fixed-price type;
- B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- D) whether award may need to be based upon a comparative evaluation as stated in the Request for Proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the IOC. Quality factors include technical and performance capability and the content of the technical proposal; and
- E) whether the primary consideration in determining award may not be price.

- 4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the IOC, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the IOC; and
- B) whether the factors listed in subsection (c)(3) of this Section are desirable in conducting a procurement rather than necessary.

- d) Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with Section 1120.2010 (Competitive Sealed Bidding) provided that it shall also include:

- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
 - 2) a statement of when and how price should be submitted.
- e) Receipt and Registration of Proposals.
- 1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals. Opening shall be witnessed by a State employee or by any other person

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

present but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

- 2) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.

f) Evaluation of Proposals.

- 1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.
- 2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered. Numerical rating systems may be used but are not required.
- 3) Classifying Proposals. For the purpose of conducting discussions, proposals shall be initially classified as:
 - A) acceptable;
 - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - C) unacceptable.

Offerors whose proposals are unacceptable shall be so notified promptly.

g) Proposal Discussions with Individual Offerors.

- 1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions to Proposals) of the Illinois Procurement Code and this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses who submitted unacceptable proposals.
- 2) Purposes of Discussions. Discussions are held to:
 - A) promote understanding of the State's requirements and the offerors' proposals; and
 - B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation factors set forth in the Request for Proposals.
- 3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

clarification of a proposal shall be reduced to writing by the offeror.

- 4) Best and Final Offers. The SPO may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The SPO may conduct additional discussions or change the IOC's requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediate previous offer will be construed as its best and final offer.

h) Award.

An award shall be made by the SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, based on the factors set forth in the Request for Proposals.

i) Publicizing Awards.

After a contract is awarded, notice of award shall be posted in the SPO's office. When the award exceeds the small purchase limit set in Section 1120.2020 of this Part, notice of award shall be published in the Bulletin.

Section 1120.2020 Small Purchases

a) Application.

- 1) Procurements of \$10,000 or less for supplies or services, other than professional and artistic, may be made without notice, competition or use of any prescribed method of source selection.
- 2) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewal term of one year or less may be made without notice, competition or use of any prescribed method of source selection.
- b) In determining whether a contract is under the limit, the value of the contract for the full term and all optional renewals shall be utilized. The stated value of the goods or services, plus any optional goods and services, shall be utilized. When the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a twelve month period.
- c) Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 of the Illinois Procurement Code.
- d) If, after signing the contract, the actual need is determined to be \$10,000 or more for supplies or services or \$20,000 for professional and artistic services, and the IOC determines that reprourement is not appropriate, the procedures for sole source or emergency procurement, whichever is applicable, must be complied with to obtain additional supplies or services.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

Section 1120.2025 Sole Economically Feasible Source Procurement

- a) Application.
The provisions of this Section apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit set in Section 1120.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1120.2030 (Emergency Procurements).
- b) Conditions for Use of Sole Source Procurement.
Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:
- 1) when the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
 - 2) when a sole supplier's items are needed for trial use or testing;
 - 3) when a sole supplier's item is to be procured for commercial resale;
 - 4) when public utility regulated services are to be procured; and
 - 5) when the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent.
- c) Changes.
Changes to existing contracts germane to the original contract that are necessary or desirable to complete the project and that can be best accomplished by the contract holder may be procured under this Section.
- d) SPO to Determine.
1) The determination as to whether a procurement shall be made as a sole source shall be made by the SPO. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.
2) Any purchase request submitted to the SPO that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other vendor will be suitable or acceptable to meet the need.
- e) Publication of Sole Source Notice.
The Purchasing Agency shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract.
1) If no challenge to this determination is made by a vendor within the 14 day period, the SPO may execute a contract with that vendor.
2) If a challenge is received, the SPO shall consider the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

information and shall commence a competitive procurement if the SPO is convinced the sole source designation is not appropriate, unless an emergency situation now exists.

- f) Negotiation in Sole Source Procurement.
The SPO shall conduct negotiations, as appropriate, to reach contract terms including price and shall maintain a record of each sole source procurement showing:
- 1) the vendor's name;
 - 2) the amount and type of the contract;
 - 3) a listing of the supplies, services, or construction procured under each contract; and
 - 4) the identification number of the contract file.

Section 1120.2030 Emergency Procurements

- a) Applications.
The provisions of this Section apply to every procurement over the small purchase limit set in Section 1120.2020 (Small Purchases) made under emergency conditions.
- b) Definition of Emergency Conditions.
1) A procurement may be made under this Section in situations in which:
- A) public health or safety, including the health or safety of any particular person, is threatened;
 - B) repairs to IOC property are needed to protect against further loss or damage to IOC property, or to prevent loss or damage to IOC property;
 - C) action is needed to prevent or minimize serious disruption in State services;
 - D) action is needed to ensure the integrity of State records;
 - E) a supplier of goods or services announces bankruptcy, going out of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is in the State's best interest;
 - F) items are available on the spot market or at discounted prices available for a limited time such that good business judgment mandates a purchase immediately to take advantage of the availability and price;
 - G) legal services to assist an agency in the formulation of policy, in drafting or evaluating documents, or in determining the extent of statutory authority that are needed sooner than the competitive process would allow;
 - H) immediate action is needed to protect the interests of the State; or
 - I) extending a contract is needed to conduct a competitive method of source selection.
- 2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

- c) Scope of Emergency Conditions.
Emergency procurement shall be limited to those supplies or services necessary to meet the emergency.
- d) Authority to Make Emergency Procurements.
Emergency procurements may be made when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practical, existing IOC contracts shall be utilized and, whenever practical, approval by the SPO shall be obtained prior to the procurement. The CPO or SPO shall be responsible for making the filings required in Section 20-30 of the Code.
- e) Source Selection Methods.
Any method of source selection, whether or not identified in the Code or this Part, may be used to conduct the procurement in emergency situations. Such competition as is practicable shall be obtained.
- f) Determination and Record of Emergency Procurement.
1) Determination. The CPO or SPO shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determinations shall be kept in the contract file with a copy sent promptly to the CPO.
2) Record. An affidavit of each emergency procurement shall be made as soon as practicable and shall include the following information:
 - A) the vendor's name;
 - B) the amount and type of the contract (if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known);
 - C) a description of what the vendor will do or provide;
 - D) the reasons for using the emergency method of source selection.
- 3) Notice of the emergency procurement shall be published in the Bulletin in accordance with Subpart D of this Part.

Section 1120.2035 Competitive Selection Procedures for Professional and Artistic Services

a) Application.

- 1) The provisions of this Section apply to every procurement of professional and artistic services except those professional and other services necessary to prepare for anticipated litigation,

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

enforcement actions, or investigations, which are exempt from the requirements of the Code and this Part.

- 2) "Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 525/1-15.60].

b) Professional and artistic services are further defined below:

- 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
- 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.
- 3) "Qualified by technical ability" means the individual who would perform the services must previously have successfully performed services of similar nature to those specified in the Request for Proposals.
- 4) Essential elements distinguishing professional services from other services are confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service.
- 5) Professional and artistic services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional services contracts.
- 6) When the IOC requires services that meet the above requirements, then the services are professional and these competitive selection procedures must be followed. Otherwise the services must be procured in accordance with the other methods of source selection authorized by the Code and this Part.

c) Conditions for Use of Competitive Selection Procedures.

Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Any procurement of such services less than \$20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 1120.2020 (Small Purchases).

d) Prequalification.

The Comptroller's Director of Administrative Services may maintain a list of prequalified professional and artistic vendors in accordance with Sections 1120.2044 and 1120.2045 of this Part. Persons may amend statements of qualification at any time by filing a new statement.

e) Public Notice of Competitive Selection Procedures.

- 1) Notice of the need for professional and artistic services shall be made by the CPO or SPO in the form of a Request for Proposals.
- 2) Notice shall be given as provided in Section 1120.2010(e) (Public Notice) of this Part.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.

f) Request for Proposals.

- 1) Contents. The Request for Proposals shall be in the form specified by the SPO and shall contain at least the following information:

- A) the type of services required;
- B) a description of the work involved;
- C) an estimate of when and for how long the services will be required;
- D) the type of contract to be used;
- E) a date by which proposals for the performance of the services shall be submitted;
- F) a statement of the minimum information that the proposal shall contain, which may include:
 - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - ii) if deemed relevant by the SPO, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;
 - iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
- iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals;
- v) a plan giving as much detail as is practical explaining how the services will be performed;

- G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and

- H) the factors to be used in the evaluation and selection process and their relative importance.

- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

- A) the plan for performing the required services;
- B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

qualifications and abilities of personnel proposed to be assigned to perform the services;

- C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

- D) a record of past performance of similar work.

g) Pre-Proposal Conference.

A pre-proposal conference may be conducted in accordance with Section 1120.2010(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals. Receipt and Handling of Proposals.

- h) Proposals and modifications shall be sent to the SPO as directed in the solicitation and shall be time-stamped upon receipt and held in a secure place until the due date and time, at which they will be opened by the SPO. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of at least one witness. A register of proposals shall be established that shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The register of proposals shall be open to the public only after award of the contract.
- i) Discussions.

- 1) Discussions Permissible. The SPO may conduct discussions with any offeror to:

- A) determine in greater detail such offeror's qualifications; and
- B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

The SPO may allow changes to the proposal based on those discussions.

- 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.

j) Selection of the Best Qualified Offerors.

After conclusion of validation of qualifications, evaluation, and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

k) Evaluation of Pricing Data.

Pricing submitted for all acceptable proposals shall be opened and ranked.

- 1) If the low price is submitted by the most qualified vendor, negotiation of price shall commence.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 2) If the price of the most qualified vendor is not low and if it is under \$25,000, the CPO or the SPO may award to that vendor.
- 3) If the price is over \$25,000, the CPO or SPO must state why the qualifications were deemed more important than price and such determination shall be published in the Bulletin.

1) Negotiation and Award of Contract.

- 1) General. The CPO or SPO shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

2) Elements of Negotiation. Contract negotiations shall be directed toward:

- A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
- B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
- C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

3) Request for Nondisclosure of Data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such officer shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the SPO shall reject the proposal.

4) Successful Negotiation of Contract with Best Qualified Offeror. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled. Compensation must be determined in writing to be fair and reasonable.

5) Failure to Negotiate Contract with Best Qualified Offeror.

- A) If compensation, contract requirements, and contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file. The SPO shall advise such offeror of the termination of negotiations.

- B) Upon failure to negotiate a contract with the best qualified offeror, the SPO may enter into negotiations with the next most qualified offeror, and so on in that manner until an award is made or the procurement canceled.

m) Notice of Award. Written notice of award shall be public information and made a part of the contract file. The SPO shall publish the names of the responsible decision makers of the IOC, the successful vendor,

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

Section 1120.2036 Other Methods of Source Selection

a) Split Award.

- 1) An award of a definite quantity requirement may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

- 2) The SPO shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.

b) Multiple Award.

- 1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the IOC is obligated to order all of its actual requirements from those vendors.

- 2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 1120.2010 (Competitive Sealed Bidding), Section 1120.2015 (Competitive Sealed Proposals), Section 1120.2020 (Small Purchases), and Section 1120.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing the business or making available product or supplier selection to allow for user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of State agencies.

- 3) The IOC shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.

- 4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.

- 5) In a multiple award situation, one vendor may be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the SPO.

c) Auction.

- Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.

d) Non-governmental Joint Purchase.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

The SPO may enter into an agreement with a person not eligible for the Governmental Joint Purchasing Act for the joint procurement of anything covered by this Code. Any method of source selection may be used and may be modified or adopted to meet the needs of the non-State entity.

e) Federal Requirements.

Requirements of this Code and this Part may be modified or adapted to meet federal requirements.

f) Donations.

With approval of the SPO, when the IOC receives a donation that provides the majority of the funding, IOC may follow any procurement or contracting requirements established as a condition of the donation, but shall follow the Code and this Part whenever practicable.

Section 1120.2037 Tie Bids and Proposals

a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation.

b) Tie bids or proposals will be treated as follows:

- 1) If the tied vendors include an Illinois resident vendor, the Illinois resident vendor shall be given the award. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with subsections (b)(2) through (5) of this Section. "Illinois resident vendor" has the meaning given in Section 1120.4510 (Resident Bidder Preference) of this Part.
- 2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State or IOC shall be given additional consideration in determining responsibility if the SPO determines that dealing with a vendor that has knowledge of State requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.
- 3) If there is no significant difference in responsibility, but there is a difference in the quality of the goods or services offered, the vendor offering the best quality will be accepted.
- 4) If there is no significant difference in responsibility and no difference in quality of the goods or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the IOC require as early delivery as possible.
- 5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the SPO determines that splitting the award among two or more of the tied bidders is in the best

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of good or service requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

c) Record. Records shall be made of all procurements on which tie bids or proposals are received, showing at least the following information:

- 1) the identification number of the solicitation;
- 2) the supply, service, or construction item; and
- 3) a listing of all the bidders and the prices submitted.

Section 1120.2038 Mistakes

a) General. Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

b) Mistakes Discovered Before Opening. A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

c) Confirmation of Mistake. When the SPO knows or has reason to conclude that a mistake has been made, such officer should request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

d) Mistakes in Bids Discovered After Opening but Before Award. This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor Informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them, depending on which is in the best interest of the State. Minor informalities include insignificant mistakes when the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples of minor informalities as to form include the failure of a bidder to:

- A) return the number of signed bids required by the Invitation for Bids;
- B) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound,

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

including but not limited to signature on an auxiliary form, submission of a bid guarantee or submission of a signed transmittal letter; or

- C) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

- i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
- ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

- 2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- 3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

- A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

- e) Mistakes in Proposals Discovered After Receipt, but Before Award. This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

- 1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.

- 2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under competitive sealed bidding. (See subsection (d) above.)

- 3) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

- A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
- B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

- A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
- B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
- C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

- f) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except when the CPO or the SPO finds it would be unconscionable not to allow the mistake to be corrected.

- g) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The SPO shall prepare the determination.

Section 1120.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) Scope of this Section.

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the IOC under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

- b) Policy.

Any solicitation may be canceled when the SPO believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.

- c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening.

- 1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

- 2) Prior to opening, a solicitation may be canceled in whole or in part when the SPO determines in writing that such action is in the State's best interest for reasons including, but not limited to:

- A) the IOC no longer requires the supplies, services, or construction;
- B) the IOC no longer can reasonably expect to fund the procurement; or

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- 3) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses who responded to the solicitation.
- 4) The notice of cancellation shall:
- identify the solicitation;
 - briefly explain the reason for cancellation; and
 - where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, or construction.
- d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening.
- After opening but prior to award, all bids or proposals may be rejected in whole or in part when the SPO determines in writing that such action is in the State's best interest. Such reasons may include, but are not limited to:
 - the supplies, services, or construction being procured are no longer required;
 - ambiguous or otherwise inadequate specifications were part of the solicitation;
 - the solicitation did not provide for consideration of all factors of significance to the IOC;
 - prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
 - When the solicitation is canceled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice informing them of the cancellation or rejection.
- e) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- f) Rejection of Individual Bids or Proposals.
- General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.
 - Notice in Solicitation. Each solicitation issued by the IOC shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this Section.
 - Reasons for Rejection. Reasons for rejecting a bid or proposal may include, but are not limited to:

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- the business that submitted the bid or proposal is nonresponsible as determined under Section 1120.2046 (Responsibility);
 - the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
 - the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the IOC in some material respect;
 - the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or
 - the proposed price is clearly unreasonable.
- 4) Notice of Rejection. Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.
- g) Disposition of Bids or Proposals.
- When bids or proposals are rejected, they shall be retained until after award. When a solicitation is canceled, the bids or proposals will be discarded or returned to the vendor at the discretion of the SPO.

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 1120.2043 Suppliers

- An agency with procurement authority may contract with any qualified source of supply, but must give preference to directed sources and should consider the special sources outlined in this Section.
- Directed Sources--State-Produced Supplies or Services.
 - Correctional Industries. The SPO, after consulting with the Department of Corrections, shall determine the type and extent of the preference given to supplies produced or services performed by Correctional Industries.
 - Central Services. Supplies and services available from the program operations of the Department of Central Management Services shall be utilized unless the SPO authorizes procurement from other sources.
- Special Sources.
 - Prior to any equipment procurement, the IOC will consider property available from the State and Federal Surplus Warehouses under the jurisdiction of the Department of Central Management Services.
 - Various goods and services are available from qualified workshops for the disabled and procurement from these workshops is encouraged. Notice and competition is not required pursuant to Section 45-35 of the Code. Information regarding the workshops

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

will be obtained from DCMS.

- 3) Various goods and services are available from State agencies and other governmental units. These may be procured without notice and competition.

Section 1120.2044 Vendor Lists

- a) The Comptroller's Director of Administrative Services may maintain a list of vendors interested in doing business with the IOC. Lists of names and addresses of bidders shall be available for public inspection.
- b) Inclusion or exclusion from the vendor list of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a State contract.
- c) Invitations for Bids and other solicitations will be sent to vendors on the vendor list for goods or services in question, except in the following cases:
 - 1) The vendor does not sell the particular commodity or equipment.
 - 2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The IOC may, if it determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis.
 - 3) The IOC determines that the best interests of the State will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete, perishables, and equipment requiring immediate service).
- d) The SPO may alternatively refer to vendor lists maintained by DCMS.

Section 1120.2045 Prequalification

- a) General.
 - 1) The SPO may require that vendors be prequalified as a condition of being placed on the bid list. An opportunity to prequalify shall be allowed at least one time each fiscal year. The opportunity to prequalify and whether prequalification will be a condition of bidding or being awarded a contract shall be announced in the Bulletin.
 - 2) The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
 - 3) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified.
- b) Professional and Artistic Services.
 - 1) When the services are needed on a recurring basis, the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

Comptroller's Director of Administrative Services shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format that shall include the following information:

- A) technical education and training;
 - B) general or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
 - C) an expression of interest in providing a particular professional or artistic service; and
 - D) any other pertinent information.
- 2) Categories of services that may be professional, depending on the requirements for education, experience and technical ability, include, but are not limited to:
 - A) medical;
 - B) legal;
 - C) accounting;
 - D) general consulting.
 - c) Qualified Products Lists. Qualified products lists are treated in Section 1120.2050 (Specifications) of this Part.

Section 1120.2046 Responsibility

- a) Application.

Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the IOC's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.
- b) Standards of Responsibility.
 - 1) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective vendor:
 - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain same) necessary to indicate its capability to meet all contractual requirements;
 - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
 - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
 - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

procurement or which would make contracting with that vendor undesirable may be declared not responsible for the particular procurement;

- E) is qualified legally to contract with the State;
 - F) has supplied all necessary information in connection with the inquiry concerning responsibility;
 - G) has a current Public Contracts number from the Illinois Department of Human Rights, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination; and
 - H) pays prevailing wages, if required by law.
- 2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Comptroller's Director of Administrative Services shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.

- c) Ability to Meet Standards.
The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- 1) evidence that such vendor possesses such necessary items;
- 2) acceptable plans to subcontract for such necessary items; or
- 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

- d) Duty Concerning Responsibility.

Before awarding a contract, the Comptroller's Director of Administrative Services must be satisfied that the prospective vendor is responsible. Responsibility can be proven until time of contract execution unless the solicitation or other law requires earlier proof.

- e) Written Determination of Nonresponsibility Required.
If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Comptroller's Director of Administrative Services. The final determination shall be made part of the procurement file.

- f) Bond for Responsibility.

Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of such vendors.

- g) Affiliated Companies.

Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing nonresponsible vendor will be declared nonresponsible unless the new organization can prove it was not set up for the purpose of

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- h) avoiding an earlier declaration of nonresponsibility.
Vendor Under Investigation.
A vendor under investigation by a governmental agency may be determined nonresponsible by the Comptroller's Director of Administrative Services.

SUBPART G: BID, PROPOSAL, AND PERFORMANCE SECURITY

Section 1120.2047 Security Requirements

- a) The Comptroller's Director of Administrative Services may require that a vendor furnish bid, proposal, or performance security on IOC contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.
- b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois.
- c) Unless the amount is set by law, the Comptroller's Director of Administrative Services will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests.
- d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, or responsibility is questioned, and for similar reasons.

- e) Permissive/Mandatory Security.

- 1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.

- 2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.

- 3) Performance security is required on all public works contracts.

- f) A vendor may submit a single or continuous security each year that will be applicable on all IOC contracts. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.

- g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any, submitted. Performance security will be returned upon full performance.

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 1120.2050 Specifications

- a) SPO's Responsibilities Regarding Specifications.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 1) The SPO is authorized to write IOC procurement specifications.
- 2) When a written determination is made by the SPO authorized to prepare such specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for IOC use in procurement of supplies or services may be entered into provided the SPO retains the authority to finally approve the specifications.
- 3) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the SPO. If no such specification exists, the SPO is hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code, any necessary specification may be utilized without regard to the provisions of this Subpart.
- b) Procedures for the Development of Specifications.
 - 1) If a specification for a common or general use item has been developed or a qualified products list has been developed in accordance with this Section for a particular supply or service, it shall be used unless the SPO authorizes use of another specification.
 - 2) All procurements shall be based on specifications that accurately reflect the IOC's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
 - 3) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate IOC needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
 - 4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
 - 5) A specification may provide alternate descriptions when two or more design, functional, or performance criteria will satisfactorily meet the IOC's requirements.
- c) Brand Name or Equal Specification.
 - 1) Brand name or equal specifications may be used when the SPO determines in writing that:
 - A) no specification for a common or general use specification or qualified products list is available;
 - B) time does not permit the preparation of another form of specification, not including a brand name specification;
 - C) the nature of the product or the nature of the IOC's requirement makes use of a brand name or equal specification

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- D) use of a brand name or equal specification is in the State's best interest.
- 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
- 3) Required Characteristics. Unless the SPO authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
- 4) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that a product is equal is on the bidder.
- d) Brand Name Only Specification.
 - 1) Determination. A brand name only specification may be used only when the SPO makes a written determination that only the identified brand name item or items will satisfy the IOC's needs.
 - 2) Use. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPO.
 - 3) Competition. The SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1120.2025 (Sole Economically Feasible Source Procurement) of this Part.
- e) Qualified Products list.
 - 1) Use. A qualified products list may be developed when testing or examining supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy IOC requirements.
 - 2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

f) Proven Products.

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) State Required Samples.

- 1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
- 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the IOC's right to require adherence to specifications.
- 3) No payment will be made for IOC required samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

h) Product Demonstration.

Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the IOC's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.

- 1) Specifications Prepared by Other Than IOC Personnel.
 - i) Specifications may be prepared by other than IOC personnel, including, but not limited to, consultants, architects, engineers, designers, and other drafters of specifications for public contracts. Contracts for the preparation of specifications by other than IOC personnel shall require the specification writer to adhere to the Code and the IOC requirements.

- 2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the Comptroller determines in writing that it would be in the best interest to accept such a bid or proposal from that person. A notice to that effect shall be published in the Bulletin.

SUBPART I: CONTRACT TYPE

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

Section 1120.2055 Types of Contracts

a) Scope of Rule.

This Subpart contains descriptions of types of contracts and limitations as to when they should be utilized by the IOC in its procurements. Types of contracts not mentioned in this Section may also be utilized.

b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting.

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Illinois Procurement Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract.

c) Types of Fixed-Price Contracts.

- 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract.

2) Fixed-Price Contract with Price Adjustment.

A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contractor price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

- i) changes in the contractor's labor agreement rates as applied to an industry or areawide (such as are frequently found in contracts for the purchase of coal);
 - ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
 - iii) in requirement contracts when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
- B) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the IOC shall retain the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

1) Determination Prior to Use.

A) A cost-reimbursement type contract may be used only when the CPO or SPO determines in writing that such a contract is likely to be less costly to the IOC than any other type or that it is impracticable to obtain otherwise the supplies or services.

B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

2) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a completion form or term form.

4) Cost Incentive Contracts.

A) General. A cost-incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the contractor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

ceiling price. The contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the contractor suffers a loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the IOC is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.

e) Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus, while late completion may entitle the IOC to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts.

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior IOC approval.

g) Definite Quantity and Indefinite Quantity Contracts.

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the IOC is obligated to order and may also provide for a maximum quantity provision that limits the IOC's obligation to order.

3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the IOC to order all the actual IOC requirements during a specified period of time.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- h) Leases.
A lease is a contract for the use of supplies or real property under which title will not pass to the IOC at any time.
- i) Recovery Contracts.
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.
- j) Option Provisions.
1) Contract Provision. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the IOC's option.
2) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals.
- k) State Produced Supplies and Services.
Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.
- l) Extraordinary Quantities.
Notwithstanding any provision in any contract, the IOC reserves the right to take bids separately if a particular quantity requirement arises that exceeds the IOC's normal needs or ordering requirements.
- m) Energy Conservation.
The CPO may authorize an IFB, RFP or sole source negotiation for energy conservation measures whereby the IOC would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

SUBPART J: DURATION OF CONTRACTS

Section 1120.2060 Duration of Contracts - General

- a) General.
1) A multi-term contract for a term up to 10 years is authorized when determined by the SPO to be in the best interest of the State.
2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than ten years.
b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled without penalty to, or further payment being required by, the IOC. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.
- c) Conditions for Use of Multi-Term Contracts.
A multi-term contract may be used when:
1) special production of definite quantities or the furnishing of long-term services are required to meet IOC needs; or
2) a multi-term contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:
A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
C) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
- d) Multi-Term Contract Procedure.
The solicitation shall state:
1) the proposed term;
2) the amount of supplies or services required for the proposed contract period;
3) whether bidders or offerors may submit prices for:
A) the first fiscal period only;
B) the entire time of performance only; or
C) both the first fiscal period and the entire time of performance; and
4) how award will be determined.
- e) Renewals.
1) Where the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the IOC.
2) Where the original procurement was silent as to renewals, the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

renewal must be procured using one of the methods of source selection authorized by the Code and this Part.

SUBPART K: CONTRACT MATTERS

Section 1120.2560 Prevailing Wage

a) For the following classifications and if competition exists, no bidder will be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed.

- 1) Public works;
- 2) Printing;
- 3) Janitorial services, window washing and security guard services having a monthly contract price of \$200 or a yearly price of \$2,000.

b) Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work.

c) Wage Rates.

1) Prevailing wage rates, benefits and conditions will be those in effect on the first date of the contract, provided that if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount.

2) If the change cannot be determined in advance, the contract will be changed by the amount of the change in wage rate and all components of price that are dependent on the usage rate, such as payroll taxes, worker's compensation insurance, vacation, sick days, and pension, provided that profit shall not increase due to prevailing wage increases. The IOC shall have the option to cancel the contract if it finds the new price unacceptable.

3) If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and will remain valid for the stated term.

d) If a collective bargaining agreement is in effect governing the type of printing, janitorial, window washing or security guard service sought, that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.

e) For public works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "location" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

f) For Printing Contracts, location means one of the following areas:

1) Cook County;

2) Boone, Bureau, Carroll, Champaign, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, and Woodford counties;

3) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, and Williamson counties.

Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.

g) For janitorial services, window washing and security guard services, location means the county in which the work is to be performed.

h) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

SUBPART L: CONTRACT PRICING

Section 1120.2800 All Costs Included

The IFB or RFP and any resulting contract should define whether prices cover transportation, transit insurance, delivery, installation, taxes, and any other costs.

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 1120.4005 Real Property Leases and Capital Improvement Leases

Real property leases and capital improvement leases shall be procured in accordance with Article 40 of the Code, this Part, and 44 Ill. Adm. Code 5000. In the event of a conflict, 44 Ill. Adm. Code 5000 shall prevail.

SUBPART O: PREFERENCES

Section 1120.4505 Procurement Preferences

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts.

Section 1120.4510 Resident Bidder Preference

- a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.
- b) In breaking a tie, an Illinois resident vendor shall be given the award.
- c) An Illinois resident vendor who would perform the services or provide the supplies from another state shall be considered a resident of that other state as against an Illinois resident vendor who would perform the services or provide the supplies from Illinois, if that other state has an in-state preference.
- d) If an Illinois resident vendor produces or performs at least 51% of the goods or services in another state, that Illinois resident vendor shall be considered a resident of that other state for purposes of application of this reciprocal preference when evaluating the bid of an Illinois resident contractor that produces or performs at least 51% of the goods or services in Illinois.
- e) The SPO may refer to the list of states with in-state preference maintained by DCMS, which shall be considered in all procurements involving out-of-state vendors.

Section 1120.4530 Correctional Industries

- a) The SPO shall refer to the listing maintained by DCMS of the goods or services available and mandatorily purchased from the Department of Corrections.
- b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the SPO.
- c) The SPO may procure from Corrections without seeking competition or giving public notice.

Section 1120.4535 Sheltered Workshops for the Disabled

- a) Use of Sheltered Workshop.
The SPO shall refer to information prepared by DCMS concerning

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

qualified sheltered workshops and categories of goods and services set aside to such sheltered workshops by DCMS. To the extent practicable, the IOC will observe such set asides.

- b) Pricing Approval.
While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar goods or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.

Section 1120.4540 Gas Mileage

- a) Vehicle specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code.
- b) Exceptions must be approved by the CPO and must fully describe the circumstances necessitating a noncompliant vehicle.
- c) No exceptions will be granted unless it is clear that a noncompliant vehicle is necessary.

Section 1120.4545 Small Business

- a) Set-Aside.
DCMS may determine categories of goods or services procurements that will be set aside for small business. The SPO may contact DCMS to determine whether a particular procurement has been set aside for small business, and, if so, the IOC may honor the set aside to the extent practicable.
- b) Small Business List.
The IOC may refer to the list of responsible vendors that meet the criteria of small business maintained by DCMS. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.
- c) Required Use.
If the SPO wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.
- d) Withdrawal of Set-Aside.
If the SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the SPO shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.
- e) Criteria for Small Business.

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

Unless the SPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

- 1) Independently owned and operated.
- 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- 3) With annual sales for most recently ended fiscal year no greater than:
 - A) \$7,500,000 for wholesale business;
 - B) \$3,000,000 for construction business; or
 - C) \$1,500,000 for retail business.
- 4) With no more than 250 employees if a manufacturing business.

A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis for its most recently ended fiscal year.

B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.

5) If both a wholesaler and a retailer, the combined wholesale and retail annual sales for its most recently completed fiscal year may not exceed \$9,000,000. The retail component may not exceed \$1,500,000 and the wholesale component may not exceed \$7,500,000.

6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchisee has the right to profit commensurate with ownership and bears the risk of loss or failure.

SUBPART P: ETHICS

Section 1120.5013 Conflicts of Interest

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

a) An individual has a direct pecuniary interest in a contract when the individual is owed a payment in conjunction with performance of a contract, including but not limited to finders fees and commission payments.

b) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, and the remaining amount is actually distributed to those entitled to receive a share of such income.

c) This Section does not apply to contracts with licensed professionals provided such contracts are competitively bid. (For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.)

Section 1120.5015 Negotiations for Future Employment

a) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an independent contractor is in a "continued contractual relationship" for the effective date of the contract until such time as the contract is terminated.

b) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continued contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individuals option, is renewable unless the State must act to terminate, or has a definite term of at least three months.

Section 1120.5020 Exemptions

If the SPO finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the CPO shall decide in writing whether to grant an exception and place the written determination in the contract file.

Section 1120.5030 Revolving Door

CPOs and SPOs shall maintain their designations for a period of at least two years following the end or revocation of the designation.

Section 1120.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

a) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, and the remaining amount is actually distributed to those entitled to receive a share of such income.

b) Personal Services shall be any contract for services subject to this Code including, by way of example, professional and artistic services,

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- repair services, cleaning and guard services.
- c) "Competitively bid" means a contract let pursuant to Section 20-10 of the Code.
- d) The SPO may prescribe forms for the disclosure of potential conflicts of interest and financial interests of bidders or offerors required under Section 50-35 of the Code.

SUBPART Q: CONCESSIONS

Section 1120.5310 Concessions

Proposed concessions or leases of State property under this provision of the Code must be coordinated with DCMS to ensure compliance with the State Property Control Act [30 ILCS 605] and rules implementing that Act.

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section 1120.5510 Complaints Against Vendors

- a) Whenever a vendor fails to deliver on time or meet specifications, or for other similar causes, the IOC shall initiate a complaint to the vendor.
- b) For relatively minor infractions, the IOC may initiate contact by telephone or in person. If not resolved by this action, a written complaint should be made.
- c) If the initial complaint is not satisfactorily answered, or for serious infractions, the IOC shall send a written complaint to the vendor detailing the problem.
- d) A copy of all written complaints and the resolution or status shall be filed with the CPO.

Section 1120.5520 Suspension

- a) Application.
This Section applies to all debarments or suspensions of vendors from consideration for award of contracts.
- b) The Comptroller's Director of Administrative Services may suspend a vendor from doing business with the IOC or for specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the Comptroller's Director of Administrative Services finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if they are received they will not be considered during the period of suspension.
- d) A contractor may be suspended for a period of time commensurate with

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

the seriousness of the offense, but for no more than five years. The suspension will be effective within seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, the suspension would not become effective until the evaluation of the objection is completed.

- e) The Comptroller's Director of Administrative Services may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the IOC. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals will not be solicited from the debarred vendor, and, if received will not be considered.
- f) The Comptroller's Director of Administrative Services shall maintain a master list of all IOC suspensions and debarments and refer to the DCMS master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

Section 1120.5530 Settlement and Resolution of Contract and Breach

- a) Authority to Settle or Resolve Controversies.
The SPO that established the contract shall have authority to settle and resolve controversies but the Comptroller may set limits on such authority.
- b) Authority of Using Agency.
The IOC has the authority to accept delivery of goods or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) Substitution of Terms/Price Reduction.
If the vendor proposes to make an adjustment by:
- 1) substituting an alternative specification; or
 - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract,
- such proposal must be referred to and approved by the SPO.
- d) Cancellation for Breach of Contract.
In any of the following cases the SPO shall have the right to terminate or rescind any contract entered into under this Part:
- 1) In the event the successful bidder fails to furnish a satisfactory performance bond within the time specified.
 - 2) In the event the vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the IOC.
 - 3) In the event any goods or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

not promptly replaced by the vendor. If there are repeated rejections of the vendor's goods or service, this shall be grounds for termination or rescission, even though the vendor offers to replace the goods or services promptly.

- 4) In the event the vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of goods or services to the IOC so that the vendor cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts with the IOC.

- 5) In the event the vendor should be adjudged bankrupt; enter into a general assignment for the benefit of his creditors or receivership due to insolvency; or disregard laws and ordinances, rules, or instructions of the IOC; or act in violation of any provision of the contract or this Part; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.

- 6) In the event of any other breach of contract or other unlawful act by the vendor.

- e) Cancellation for Fraud, Collusion, Illegality, Etc.

The IOC may cancel any contract it established if there is sufficient evidence to show that:

- 1) The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
- 2) The contract conflicts with any statutory provision of the State of Illinois or of the United States.

- f) Withholding Money to Compensate State for Damages.

If a contract is terminated or rescinded under this Section, the IOC may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based.

- g) Damages.

The damages for which the IOC may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

- 1) the additional cost of goods or services bought elsewhere;
- 2) cost of repeating the procurement procedure;
- 3) any expenses incurred because of delay in receipt of goods or services; and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

Section 1120.5540 Violation of Statute or Rule

- a) Determination that Solicitation or Award Violates Law.
If the SPO finds that the solicitation or proposed award is in

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

violation of statute or rule, the SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.

- b) Determination that Contract Violates Statute or Rule.
Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the IOC.

- c) Effect of Declaring a Contract Null and Void.

In all cases in which a contract is voided, the IOC shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

Section 1120.5550 Protests

- a) Protest Resolution by the SPO.

An actual or prospective bidder, offeror, or contractor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.
Complaint.

- b) Complaint.
Complainants should seek resolution of their complaints initially with the IOC. Such complaints may be made verbally or in writing.
- c) Filing of Protest.

- 1) Protests shall be made in writing to the SPO and shall be filed within 14 days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the SPO. Protests filed after the 14 day period shall not be considered. With respect to a protest regarding specifications, the protest must be received within 14 days after the date the solicitation was issued, and in any event must be received by the IOC at the designated address before the date for opening of bids or proposals.

- 2) To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:

- A) the name and address of the protester;
- B) appropriate identification of the procurement, and, if a contract has been awarded, its number;
- C) a statement of reasons for the protest; and
- D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

- d) Requested Information: Time for Filing.

Any additional information requested by the IOC shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

SPO may result in resolution of the protest without consideration of that information.

- e) Stay of Procurements During Protest.
When a protest has been timely filed and before an award has been made, the SPO shall make no award of the contract and any award made shall be stayed until the protest has been resolved. The CPO may authorize award or reinstate the contract if necessary to protect the interests of the State.
- f) Decision by the CPO or SPO.
Time for Decisions. A decision on a protest shall be made by the SPO as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.
- g) Effect of Judicial or Administrative Proceedings.
If an action concerning the protest has commenced in court, the CPO or SPO shall not act on the protest but shall refer the protest to the IOC's Chief Legal Counsel.

SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section 1120.6010 Supply Management and Dispositions

- a) Inventory Responsibility.
The IOC shall maintain accountability over tangible personal property and other supplies under its control subject to the requirements of the State Property Control Act and rules implementing that Act.
- b) Supply Management.
The IOC shall order supplies on a schedule and in quantities so as to maintain no more than a 12 month supply in inventory. Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet IOC needs. This 12-month inventory restriction does not apply when a greater quantity is needed to meet minimum order quantities.
- c) Annual Inventory.
All IOC inventory storage areas shall be inventoried at least annually.
- d) Report of Inventory.
The Comptroller's Director of Administrative Services shall be notified periodically of all supplies in excess of 12 months supply.

SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section 1120.6500 General

In an effort to make the procurement process more efficient, State and other governmental units may agree to utilize each others procurement contracts. Agreements between State agencies with procurement authority and other

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

governmental units with taxing authority are governed by this Part and the Governmental Joint Purchasing Act [30 ILCS 525].

Section 1120.6510 State Use of Other Contracts

The IOC may utilize procurement contracts established by other authorized State agencies or units of government:

- a) if:
 - 1) the contract was established by competitive sealed bid or competitive sealed proposal pursuant to the Code; or
 - 2) competitive sealed bid or competitive sealed proposals are not required by the Code;
- b) if the price is reasonable;
- c) if an existing contract of the IOC would not be violated;
- d) if allowed by the vendor;
- e) if necessary State contract terms can be added; and
- f) if State legal requirements are otherwise met.

Section 1120.6520 No Agency Relationship

In any joint procurement situation, the agency establishing the contract does not become the procurement agent for the other.

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 1120.7000 Severability

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

Section 1120.7010 Government Furnished Property

If the IOC provides any property to the vendor in furtherance of the contract, such property shall remain the property of the State but may be consumed by the vendor if necessary to complete the contract. Vendor will issue a receipt for the property and will be responsible for its safekeeping and return of unused property to the State.

Section 1120.7015 Inspections

- a) Inspection of Plant or Site.
The IOC may enter a contractor's or subcontractor's plant or place of business to:
 - 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
 - 2) audit the books and records of any contractor or subcontractor pursuant to Section 1120.7020 (Records and Audits) of this Part;

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

- 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
- 4) determine whether the standards of responsibility have been met or are capable of being met;
- 5) determine if the contract is being performed in accordance with its terms; and
- 6) accomplish any other purpose permitted by law.

b) Inspection and Testing of Supplies and Services.

- 1) Solicitation and Contractual Provisions. State contracts may provide that the IOC may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.
- 2) Procedures for Trial Use and Testing. The Comptroller's Director of Administrative Services may establish operational procedures governing the testing and trial use of equipment, material, and other supplies, and the application of resulting information and data to specifications or procurements.

c) Conduct of Inspections.

- 1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector other than the SPO may change any provision of the specifications or the contract without written authorization of the SPO. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.
- 2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
- 3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

Section 1120.7020 Records and Audits

a) Retention of Books and Records.

Books and records that relate to performance of an IOC contract, including subcontracts, and that support amounts charged to the IOC shall be maintained:

- 1) by a contractor, for three years from the date of final payment under the prime contract;
- 2) by a subcontractor, for at least three years from the date of final payment under the subcontract; and
- 3) by a contractor and subcontractor for such longer period of time

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

as is necessary to complete ongoing or announced audits.

b) Contract Audit.

- 1) Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and materials contract.
- 2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:
 - A) the financial condition, integrity, and reliability of the contractor or subcontractor;
 - B) any prior audit experience;
 - C) the adequacy of the contractor's or subcontractor's accounting system;
 - D) the number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;
 - E) the use of federal assistance funds;
 - F) the fluctuation of market prices affecting the contract; or
 - G) any other situation when the CPO or SPO finds that such an audit is necessary for the protection of the State's best interest.

Section 1120.7025 Written Determinations

- a) Preparation and Execution. When the Code or this Part requires a written determination, the officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated.
- b) Content. Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made.
- c) Obtaining Supporting Information. While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel, are responsible for furnishing to the cognizant official, in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the cognizant official who shall have the authority to decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination.
- d) Forms. The Comptroller's Director of Administrative Services shall prescribe methods and operational procedures to be used in preparing written determinations.
- e) Retention. Each written determination shall be filed in the solicitation or

OFFICE OF THE COMPTROLLER

NOTICE OF PROPOSED RULES

contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by statute or rule, shall be open to public inspection.

Section 1120.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- | | <u>Heading of the Part:</u> | <u>Section Numbers:</u> | <u>Proposed Action:</u> |
|----|---|-------------------------|-------------------------|
| 1) | Drug Abuse Programs | 2055.10 | Repeal |
| | | 2055.20 | Repeal |
| | | 2055.30 | Repeal |
| | | 2055.40 | Repeal |
| | | 2055.50 | Repeal |
| | | 2055.110 | Repeal |
| | | 2055.120 | Repeal |
| | | 2055.210 | Repeal |
| | | 2055.220 | Repeal |
| | | 2055.310 | Repeal |
| | | 2055.320 | Repeal |
| | | 2055.330 | Repeal |
| | | 2055.410 | Repeal |
| | | 2055.420 | Repeal |
| | | 2055.430 | Repeal |
| | | 2055.440 | Repeal |
| | | 2055.450 | Repeal |
| | | 2055.460 | Repeal |
| | | 2055.470 | Repeal |
| | | 2055.480 | Repeal |
| | | 2055.490 | Repeal |
| | | 2055.495 | Repeal |
| | | 2055.510 | Repeal |
| | | 2055.520 | Repeal |
| | | 2055.530 | Repeal |
| | | 2055.710 | Repeal |
| | | 2055.720 | Repeal |
| | | Appendix A | Repeal |
| | | Appendix B | Repeal |
| | | Appendix C | Repeal |
| 4) | Statutory Authority: Ill. Revised Statutes 1984 Supp., Ch 111 1/2, pars 6328 and 6329 (Repealed by P.A. 85-965, Art XII, effective July 1, 1988 ; P.A. 85-1209, Art. II 2-76, 2- 78.1, effective August 30, 1988) | | |
| 5) | A Complete Description of the Subjects and Issues involved: Part 2055 "Drug Abuse Programs" has been superceded by other rules adopted by the Department of Human Services, Office of Alcoholism and Substance Abuse. This action would repeal this Part. | | |
| 6) | Will this proposed rule replace as emergency rule currently in effect? | | |

NO

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule (amendment, repealer) contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comment concerning these rules within 45 days after the issue of the Illinois Register. All requests and comments should be submitted in writing to:

Ms Susan Warner Weir, Bureau Chief
Administrative Rules and Procedure
Department of Human Services
100 South Grand Avenue East
Springfield, IL 62762
Telephone Number: (217) 785- 9772
TTY: (217) 557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

- 12) Initial Regulatory Feasibility Analysis: The Department has determined that this rulemaking will not affect small businesses.

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the proposed Rule(s) begins on the next page.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

TITLE 77: PUBLIC HEALTH
CHAPTER X: DEPARTMENT OF ALCOHOLISM AND SUBSTANCE ABUSE
SUBCHAPTER d: LICENSURE

PART 2055
DRUG ABUSE PROGRAMS (REPEALED)

SUBPART A: PROMULGATION

Section	
2055.10	Authority
2055.20	Definitions
2055.30	Public Policy
2055.40	Applicability and Exceptions
2055.50	Statutory Authorities

SUBPART B: GENERAL PROVISIONS

Section	
2055.110	Incidents of Licensure
2055.120	Application for License

SUBPART C: REPORTS AND RECORDKEEPING

Section	
2055.210	Records
2055.220	Reports

SUBPART D: INSPECTIONS AND INVESTIGATIONS

Section	
2055.310	Inspections
2055.320	Investigations
2055.330	Collection and Seizure

SUBPART E: CLINICAL PROCEDURES

Section	
2055.410	General
2055.420	Methadone, Residential, Transitional Care, and Outpatient Drug-Free Programs
2055.430	Methadone Treatment
2055.440	Residential Treatment
2055.450	Transitional Care
2055.460	Outpatient Drug-Free Treatment
2055.470	Central Intake
2055.480	Research Involving Human Subjects
2055.490	Use of Methadone in Hospitals

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

2055.495 Intervention Programs

SUBPART F: HEARINGS

Section

2055.510 General

2055.520 Conduct of Formal Hearings

2055.530 Informal Hearings

SUBPART G: SANCTIONS

Section

2055.710 General

2055.720 Administrative Actions

APPENDIX A List of Federal Forms to be Submitted for Methadone Use

APPENDIX B Notice of Inspection

APPENDIX C Physical/Laboratory Examination Matrix

AUTHORITY: Implementing and authorized by Sections 28 and 29 of the Alcoholism and Substance Abuse Act (Ill. Rev. Stat. 1984 Supp., ch. 111 1/2, pars. 6328 and 6329.).

SOURCE: Amended at 2 Ill. Reg. 8, p. 1, effective February 24, 1978; amended at 2 Ill. Reg. 16, p. 165, effective April 24, 1978; amended at 3 Ill. Reg. 10, p. 55, effective March 5, 1979; emergency amendment at 4 Ill. Reg. 44, p. 482, effective October 21, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 4868, effective April 22, 1981; amended at 6 Ill. Reg. 556, effective December 29, 1981; amended at 7 Ill. Reg. 16647, effective December 29, 1983; transferred to the Department of Alcoholism and Substance Abuse by the Alcoholism and Substance Abuse Act (Supp. to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 6301 et seq.) effective July 1, 1984; codified at 8 Ill. Reg. 19316; emergency amendment at 9 Ill. Reg. 8178, effective May 22, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 5089, effective March 18, 1986; repealed at 22 Ill. Reg. _____, effective _____.

SUBPART A: PROMULGATION

Section 2055.10 Authority

This Part is promulgated pursuant to the Alcoholism and Substance Abuse Act (The Act), which charges the Department of Alcoholism and Substance Abuse (the Department) with regulating the drug abuse facilities and programs operating within the State of Illinois. The powers and functions expressly delegated to the Department by the Act are exclusive State powers and functions. Nothing within the Act prohibits the exercise of any power or the performance of any functions, including the power to regulate for the protection of the public health, safety, morals and welfare by any unit of local government, including a

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

home-rule unit, other than the powers and functions set forth in the The Act and expressly delegated to the Department to be exclusive state powers and functions.

Section 2055.20 Definitions

As defined in this Part, unless the context otherwise requires, the terms defined herein have the meanings ascribed to them in this Section:

"Abuse"

See Drug Abuse.

"Act"

The Alcoholism and Substance Abuse Act (the Act), Chapter 111 1/2, pars. 6301 et seq. of the Supp. to Ill. Rev. Stat. 1983, and the rules promulgated thereunder.

"Addict"

Any individual who habitually uses certain mind-altering substances or intoxicants to the point of having developed a physical dependence on them. Ability to function and make judgments may be impaired to a greater or lesser degree.

"Addiction"

Physical dependence upon a drug; i.e., narcotics, barbiturates, and certain tranquilizers and stimulants. Indicators of addiction are the development of tolerance to increasing amounts of the drug to gain the same effect and characteristic symptoms of physical distress during the period of withdrawal when the use of the drug is discontinued abruptly.

"Admission"

The process of initiating services to an individual by a drug abuse program through the specified protocols. This may entail intake (as defined in this Section), screening, processing and entrance into a clinic, as well as establishment of a service regimen.

"Applicant"

Any person who has applied to the Department for a license or renewal thereof.

"Application"

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

The process through which a person applies for a license or renewal as outlined in the application procedures herein.

"Audit"

Any systematic review, inquiry or appraisal of procedures, operations and/or records involving analyses, tests, confirmations or proofs for the purpose of determining conformity with prescribed criteria.

"Auditor"

A Department representative or third party detailed to perform an audit under competent authority, acting on behalf of the Department or for the concerned person operating a program.

"Chemotherapy"

The prevention, treatment or management of psychological or physical disorders by the systematic administration of chemical drugs.

"Client"

A consumer of some portion of services provided by a treatment network; specifically, a registered participant in a drug abuse treatment program.

"Clinic"

A person who provides a drug abuse treatment service at a designated location, center or facility.

"Clinical Procedure"

A systematic set of services provided for the purpose of resolving an identified drug abuse problem of a client, to include interviewing, diagnosis, treatment planning, counseling, supportive services, activities and follow up.

"Clinical Record"

The record established on entry in a program and kept on every client that contains the history of the individual's association with the program. This record shall include the medical and drug history, results of the physical examinations and laboratory tests, all other assessments, treatment plans, progress notes, medication records, and all correspondence dealing with the client.

"Compliance Officer(s)"

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Duly accredited Department inspector(s) empowered to review records for the purpose of conducting compliance inspections pursuant to Federal and State regulations.

"Contraband"

Any substance, item, goods and/or materials obtained or possessed illegally. Nonprescribed intoxicants are considered contraband of themselves.

"Controlled Substance"

Any substance which is enumerated in: the schedules of Article II of the Illinois Controlled Substance Act (Ill. Rev. Stat. 1983, ch. 56 1/2, pars. 1201-1215); the schedules of Section 202 of the U.S. Public Laws 91-513, "Comprehensive Drug Abuse, Prevention and Controls Act of 1970" (42 U.S.C. 202); the "Cannabis Control Act" (Ill. Rev. Stat. 1983, ch. 56 1/2, pars. 701 et seq.) enacted by the 77th General Assembly of the State of Illinois; or as amended heretofore or hereafter.

"Counseling"

A process based on a client/counselor relationship or group/counselor interaction for the purpose of identifying client problems and needs, setting mutually acceptable goals and interventions, exploring alternative solutions, and practicing new behaviors.

"Dangerous Drugs"

Any organic or synthetic substance or derivative which, when used, can result in physical and/or psychological addiction or dependence or which use may endanger the public morals, health, safety or welfare. Also means explicitly controlled substances and cannabis.

"Data"

Facts and information concerning administrative and operational procedures.

"Day Care"

See Transitional Care Program.

"Department"

The Department of Alcoholism and Substance Abuse and its agents and representatives.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

including but not limited to: counseling, medical, vocational and rehabilitative therapy; and legal assistance.

"Drug Receipt Coordinator"

A counselor or medical staff member designated by a drug abuse treatment program, who meets the requirements for registration to distribute controlled substances under the State Controlled Substances Act, and is approved by the Department to receive suspected drug samples directly from a donor or inquirer for the purpose of forwarding the samples of a laboratory for analysis.

"Facility"

Same as Clinic.

"Federal Authorities"

United States agencies such as DEA, FDA, NIDA, SAODAP and/or their successor agencies.

"Food and Drug Administration (FDA)"

United States agency responsible for enforcing the Food, Drug and Cosmetic Act and monitoring the application of methadone.

"Formal Agreement"

A written contract, letter of agreement or any other document which defines the relationship between the program and another person.

"Guideline"

An optional standard of practice which is encouraged but not required. Guidelines appear in italics throughout this Part.

"In-patient Program"

A structure regimen within a licensed medical or psychiatric hospital where a client resides and is provided drug abuse treatment services.

"Inspection"

The act of: conducting interviews, record reviews, and physical observations at a program to assess the level of compliance with Federal and State rules and regulations; and performing qualitative program evaluations.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

"Dependent"

Relying upon regular doses of any substance to maintain a customary level or euphoria or inhibition of anxiety.

"Detoxification"

Administering or dispensing a substitute drug in decreasing doses to reach a drug-free state during a period not to exceed 21 days for methadone detoxification, in order to withdraw an individual who is dependent on heroin or other morphine-like drugs from the use of these drugs. In non-opiate dependency cases, non-methadone detoxification may be accomplished by physicians, exercising their medical judgement, using dosages of an appropriate medication.

"Director"

The Director of the Department of Alcoholism and Substance Abuse.

"Dispensing Area"

That area of the methadone treatment facility that meets minimal security criteria specifically utilized by the licensed practitioner to administer prescribed medication to program clients.

"Drug Abuse"

The use of a chemical substance which has mind-altering effects in a manner which interferes with one or more of the following: physical and emotional health, sound physical and emotional functioning, and educational or occupational performance.

"Drug Dependence"

State of reliance, either psychological, physical, or both, which may result from chronic, periodic or continuous use of a mind-altering drug or alcohol.

"Drug Enforcement Administration (DEA)"

United States agency responsible for enforcing Federal laws pertaining to controlled substances from a criminal jurisdiction and includes security of drug stocks.

"Drug Program"

Any structured activity designed to assist or restore an individual and remove any dependency on drugs by providing a variety of services,

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

"Intake"

The process of collecting and evaluating information which may include medical examinations and medical, psychosocial and drug abuse histories to determine the appropriateness of admitting a prospective client into a drug abuse program.

"Investigation"

The conducting of tests and evaluations by Departments investigators to assure compliance by applicants or licensees with the laws and regulations governing drug abuse functions licensed by the Department.

"Investigator(s)"

Duly commissioned sworn personnel operating with Department badge and credentials empowered to investigate all aspects of enforcement of the Act.

"Is Recommended"

A term used to indicate a method which is preferred though not mandatory.

"Licensee"

Any person licensed by the Department.

"Licensure"

The issuance of a license by the Department which authorizes the licensee to perform specific drug abuse services, as long as full compliance with the laws and regulations applicable to the performance of the services is maintained by the licensee.

"Maintenance"

The continued administering or dispensing of a recognized oral opiate substitute for heroin or other morphine-like drugs to an individual dependent on heroin, at relatively stable dosage levels for a period in excess of 21 days, in conjunction with the provision of appropriate social and medical services.

"May"

A term used in the interpretation of a standard, reflecting a permissible method that is recognized but not mandatory.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

"Mental Health Consultant"

Person who by nature of mental health education, training or experience, is qualified to provide inservice training, case review supervision, and those supplementary psychological services that may be needed, in order to increase the skills, efficiency and quality of services provided by program staff.

"Modality"

That specific drug abuse program identifier or classification: i.e., central intake units; methadone clinics; outpatient, drug-free centers; residential units; transitional care facilities; or research projects involving human subjects.

"National Institute on Drug Abuse (NIDA)"

United States agency which has as its primary function drug abuse program development by funding drug abuse programs and establishing guidelines to recipients of the Federal funds.

"Office of Drug Abuse Policy (ODAP)"

A Federal Executive Office established in 1977 responsible for coordinating the activities of the several Federal agencies currently involved in drug abuse law enforcement and treatment.

"Paraprofessional"

A non-degreed individual who is experienced and trained to perform treatment and rehabilitative functions within a program.

"Patient"

Same as client.

"Person"

Any individual, government or governmental subdivision or agency, corporation, partnership, firm business trust, estate, organization, or association acting individually or as a group.

"Program"

Same as Drug Program.

"Protocol"

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

The program document(s) which details the drug abuse services and modality the applicant intends to provide.

"Public Accountant"

An accountant who offers services professionally to the general public.

"Readmission"

The act of reinitiating services to an individual who previously had been provided services by the same drug abuse program.

"Regulation"

The general administrative regulatory category(ies) within which the licensing process occurs and with which both State licensing officials and local programs shall comply.

"Rehabilitation"

The restoration of a client to the fullest physical, mental, social, vocational and economic usefulness of which the client is capable. Rehabilitation includes but is not limited to medical treatment, occupational training, job counseling, social and domestic rehabilitation, and education.

"Residential Program"

A 24-hour, live-in, highly structured, well-supervised environment established to maximize the impact on clients for positive change. Chemotherapeutic elements may or may not be utilized.

"Rule"

A specific requirement enumerated within the respective regulatory category.

"Shall"

A term used to indicate a mandatory statement: the only acceptable method under Department standards.

"Should"

A term used in the interpretation of a standard reflecting the commonly acceptable method, yet allowing for the use of effective alternatives when the standard can be shown to be appropriate.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

"Single State Authority (Agency)"

The Department as designated pursuant to Federal rules and regulations pertaining to methadone control and Public Law 92-255.

"Standard"

The individual element(s) that comprises a rule (printed in bold type).

"Storage Area"

A safe or vault specifically utilized to store controlled substances that meets minimal Federal and State security requirements. The dispensing area is considered a storage area during the preparation of medication and throughout dispensing hours.

"Street Drug Analysis"

Street drug analysis is an additional primary modality for licensure by the Department. It is nonjudgmental preventive educational drug abuse program endeavor, designed to appraise active or potential drug users with an accurate qualitative assay of substances acquired through street contact and to develop further program associations and opportunities for counseling with the persons involved. One face-to-face contact between the submitter of the sample and the drug analysis program representative is required. The necessity for a second face-to-face contact will be at the judgement of the drug analysis program representative.

"Subterfuge"

Any plan or action employed to conceal the true person of interest for whatever reason.

"Transitional Care Program"

An intensive psychosocial, vocation and supportive follow up service which is community-based and is readily accessible to persons eligible to participate in such a program. A transitional care drug abuse program shall provide advice, counsel, technical skills, and social services to further the individual's ability to live and work in the community without additional drug abuse treatment.

In the case of terms not specifically defined herein, the meanings ascribed in Webster's New World Dictionary, 2nd College Edition, or subsequent revisions shall prevail.

Section 2055.30 Public Policy

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

a) Purpose

To the end that the health, safety and welfare of the People of the State of Illinois should be protected and the human suffering and social and economic loss caused by abuse of controlled substances and the use of cannabis should be minimized through the regulation of treatment, care, rehabilitation, education and prevention programs, all persons engaged in drug abuse-associated treatment, care, rehabilitation, education and training programs will be licensed and regulated in accordance with this Part.

b) Client welfare, sanctity and rights

1) For the purpose of guaranteeing the minimal standards of care for the client, the Department will ensure, through due process, that the administration and staffing by all persons operating under this Part provide a safe physical and sound psychological environment conducive to a treatment regimen leading to the rehabilitation of the client. The Department shall take reasonable measures to protect client welfare and/or ensure continuity of treatment for clients enrolled in licensed programs by:

- A) Suspending program operations immediately, without hearing, in cases involving hazard to either the public health or safety of the client; e.g., continued administration of medication in the absence of a staff physician for a period of a week or more.
- B) Assisting in the placement of clients within alternative facilities in the event of suspension or revocation of the license.
- 2) Individuals enrolled as clients in treatment programs should not be employed on the clinic program staff in any capacity involving contact with other client records or treatment plans. Applications for exceptions to this rule shall be made by the program's board of directors and the program director. The concomitant responsibilities to be discharged, the individual's competence and effectiveness in working in this position, and how the program's overall staffing requirements are met with this individual employed. If there is an alternative treatment program within close proximity, the staff member shall be referred for appropriate treatment. The following shall be included in the application:
 - A) Name of individual.
 - B) Date enrolled in program and/or of conviction and/or release from incarceration.
 - C) Identify professional who will provide treatment.
 - D) Description of treatment regimen (i.e., type of supportive services, schedules of clinic visits, prognosis and date of expected termination).
 - E) Dosage level and pickup schedule (if applicable).
 - F) Skills brought to program and basis for the exception

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

request.

- G) Signature of program board chairman.
- H) Signature of program director.
- I) Client signature attesting authorization to release the stated information for the purpose of obtaining a waiver to Section 2055.30 (b).

3) All programs shall subscribe to a philosophy which allows clients the following rights:

- A) To remain anonymous, even if this means no service can be given.
 - B) To decline service (the delivery of service shall be non-coercive).
 - C) To know at all times how and where to register complaints.
 - D) To know what information about them is released and to whom.
 - E) To have freedom from mental or physical abuse, and to have their civil rights respected.
 - F) To receive alternate services from other organizations with or without the assistance of the program.
 - G) To not be excluded from treatment on the grounds of pregnancy, provided there is documentation that necessary physical and mental health care is available.
- 4) All facilities should be maintained in a clean and safe condition in accordance with appropriate federal, state and local codes and other laws; and:

- A) Each facility shall be large enough to serve comfortably the number of clients it currently has or that it proposes to have in treatment.
- B) No counseling sessions shall take place in any part of the facility except in designated areas provided for counseling services. The dispensary section shall not be used for counseling services.
- C) In order to maintain privacy in counseling, specific rooms shall be identified as counseling rooms and shall not be used for any other purpose during the times counseling sessions are taking place.
- D) Appropriate space shall be provided to accommodate clients and/or families who are awaiting services.
- E) Suitable space shall be available to accommodate children that may be accompanying the clients or families awaiting services. Children of persons other than clients or families awaiting services will not be allowed in the clinic. Supervision shall be provided to oversee the children in an area specifically identified, so that they cannot be disruptive to clinic activities. This area shall be removed from the primary dispensing station.
- F) Appropriate furnishings and equipment for the program type shall be provided.
- c) Availability of medical personnel

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

The presence of medical personnel at a program is contingent upon the respective modality license. Specific requirements are enumerated in Subpart D.

- d) Adherence to professional standards
All clinical or program operations shall be conducted in a professional manner, as recognized by established professional bodies operating within the State of Illinois.
- e) Compliance with Federal, State and local regulations
Any person operating under this Part shall comply with applicable Federal and State regulations and local statutes pertaining to: controlled substances; health, safety, zoning and building requirements; and operation standards. The failure to comply with or the violation of any provision of the Act or any rule, regulation or standard adopted by the Department thereunder, by any person, is a petty offense. Each subsequent offense, after conviction of a first offense, shall be a Class A misdemeanor. Each day's violation shall constitute a separate offense.
- f) Recognition to provide for exigencies
Exigencies and the needs of clients may temporarily preclude strict adherence to each rule promulgated under this Part. In the interest of protecting and serving the needs of clients and the People of the State of Illinois, provision is made herein for temporary exceptions to be granted on written application to the Department and with written approval of the Department. Copies of exception actions will be retained in the operating records of the activity.
- g) Unlawful activity or contraband prohibited on premises
Unlawful activity and contraband shall be prohibited from the premises of any licensed activity. Permitting the commission of unlawful acts or the presence of contraband on the premises of any licensed activity shall be grounds for subsequent administrative, civil or criminal action by the Department or other competent authority against the licensee or person(s) engaging in the unlawful activity or responsible for introducing the contraband onto the licensed premises. Possession of firearms within the program area is prohibited, except for individuals specifically authorized or licensed under applicable law and by the program board of directors. Persons authorized to carry weapons in the program area will be identified in writing to the Department, and the weapon concerned will also be identified. Possession of other items which are commonly used as weapons such as bludgeons, knives with blades in excess of three inches, switch-blade knives, razor devices, or other deadly weapons identified under applicable law are similarly prohibited from the program area.
- h) Discrimination prohibited
No person operating under this Part shall discriminate against any individual on the basis of race, color, religion, sex or national origin in any manner prohibited by the law of the United States or the State of Illinois.
- i) Interference with Department staff prohibited

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

No person shall hinder, interfere, obstruct or intervene with any inspection or investigation conducted by the Department. Any person or any employee or agent of any person who gives, pays or offers, directly or indirectly, to any investigator or other employee of this State authorized to perform any of the duties prescribed by this Act or by the rules and regulations of the Department, any money or other thing of value, with intent to influence such investigator or other employee of this State in the discharge of his duty, shall, upon conviction, be guilty of a Class 4 felony.

- j) Availability of regulations
A current copy of this Part shall be maintained on the licensed premises, readily available to all program personnel and clients.
- k) Assent to regulation
Each person licensed under this Part shall agree to adhere to all rules, directives and procedures set forth in this Part and any regulation promulgated in the future regarding the use of controlled substances. Consistent with promulgated confidentiality constraints, the licensee or applicant for license shall furnish the Department such information concerning its staff, clients and program activities as may be required to enable the Department to carry out the mandate of the Act.
- l) Constructive knowledge
All persons employed or engaged in any consultative capacity in any program operating under current regulations shall be apprised and briefed of these contents on their first day of duty and semiannually thereafter. Such briefing shall be to ensure understanding and compliance with current regulations. Appropriate reflection of the briefing shall be made on staff personnel records.
- m) Department identification cards' use regulated
Department staff members, prior to conducting inspections and/or audits, will present official Department identification to appropriate facility employees to verify Department employment. This identification will contain the employee's photograph, job title and other identifying information. Improper use and unauthorized possession of such identification is prohibited. The retention of identification cards by former Department employees constitutes unauthorized possession.
- n) Analysis of street drugs
A program otherwise licensed by the Department may engage in the provision of anonymous drug analysis services only upon the prior notification and written approval of the Department. The provision of such services shall comport with any and all applicable Department guidelines and existing Federal, State and local laws, regulations and ordinances.
- o) Limitations on take-home dosages of controlled substances
1) Recognizing that the potential for diversion of controlled substances is higher when these substances are administered outside the confines of the clinic, it is necessary to limit

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

take-home dosages. Such take-home medication shall be issued in dosages prepared for oral administration in containers labeled according to Federal and State requirements. The containers shall have child-proof caps which meet the standards in Annex A. Specifically in methadone treatment, no client shall be given individual doses of more than 100 mg. and/or a total of more than 200 mg. of methadone take-home medication. This does not abrogate the "Frequency of Attendance" rule found in Section 2055.430(q). All empty take-home medication containers must be returned personally by the client to the issuing program for disposal and accountability prior to subsequent take-home dosages being dispensed to the client. Requests for exception to this limitation must be submitted to the Department in writing by the medical director at least one week in advance.

- 2) Take-home dosages of methadone shall be prepared in a manner which minimizes the potential for parenteral abuse or accidental ingestion by another individual. It is recommended that the liquid vehicle contain a preservative to permit the client to store the take-home medication in a place not accessible to others. Plain water is not an acceptable dilutant. Clients who demonstrate intolerance to a particular type may be given methadone in mixtures not meeting the above guidelines after obtaining prior approval from the Department. Prior approval may be obtained in accordance with the provisions of Section 2055.4(e) and (f). Requests shall be signed by the Medical Director. Requests will be reviewed on the basis of documented medical hardship and the degree of risk of misuse of take-home medication. For the purposes of this Part, "documented medical hardship" means physiological evidence of intolerance to a permissible vehicle (e.g. diabetes, in the case of sugared dilutant vehicles; gastro-intestinal conditions, in the case of acidic dilutant vehicles). "Degree of risk of misuse" means the likelihood of parenteral use or diversion. The following shall be considered in determining whether there exists a likelihood of parenteral use or diversion.
 - A) Absence of recent abuse of drugs (narcotic or non-narcotic);
 - B) Absence of known recent criminal activity, e.g. drug dealing;
 - C) Regularity of clinic attendance;
 - D) Stability of the client's home environment and social relationships;
 - E) Assurance that take-home medication can be safely stored within the client's home; and
 - F) Satisfactory progress in treatment.

- 3) It is further recommended that special precautions be planned with clients whose take-home dosages could provide a high risk of accidental ingestion by others, such as clients living with or having small children as frequent visitors. Such special

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

precautions might include provision of an appropriately sized lock box or additional child-proof containers for storage at home, or arrangements for storage in an area totally inaccessible to children. The provisions of this Part are based upon the requirements and recommendations set forth in 21 CFR 291.505 (federal regulations governing the use of methadone).

- p) Prohibition against client double enrollment
State and Federal laws prohibit an individual from obtaining or being in possession of any controlled substance by means of misrepresentation, fraud, forgery, deception or subterfuge. Under applicable provisions of these State and Federal laws, it is unlawful for clients to be concurrently enrolled and obtaining methadone HCL (or other authorized opiate substitute) from more than one program. Individuals violating these laws will be subject to prosecution. The program sponsor is required to notify the Department immediately in cases where there exists information that a client is either attempting to enroll or is enrolled in more than one methadone program at the same time for the purpose of receiving additional medication. If such notification is made verbally, the program sponsor shall furnish written confirmation to the Department within 48 hours following the verbal communication.

Section 2055.40 Applicability and Exceptions

- a) Persons encompassed

The rules promulgated herein shall apply to all persons and voluntary or public-sponsored activities engaged in providing direct or indirect substantive or technical treatment, care, rehabilitation, education and training service to individuals who abuse drugs (not including alcohol), except as specifically noted in this Section.

- b) Specific exceptions for hospitals

No hospital licensed under the Illinois Department of Public Health pursuant to the Hospital Licensing Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 142 et seq.) shall be required to obtain a Department license for any facility or service conducted on or operated from the licensed premises of the hospital. Hospital programs involving the use of methadone shall be approved by Federal authorities and the Department.

- c) Specific exceptions for certain physicians

No person licensed to practice medicine in all its branches by the Illinois Department of Registration and Education pursuant to the Medical Practice Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 4401 et seq.) shall be required to obtain a Department license for any medical services conducted during the course of regular practice, unless such practice is significantly devoted to the treatment, care, rehabilitation, training or education of addicts and abusers of dangerous drugs. The Department shall have the power to evaluate the degree of significance of such practice devoted to drug abuse and to

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- require licensure as a program as appropriate.
- d) Restrictions on operating
- No person operating under this Part shall continue operations in violation of any rule without having applied for an exception. Applications must be submitted within 48 hours of detection of the discrepancy.
- e) Procedures for obtaining exceptions
- The program director must submit a written request for desired exceptions, citing the rule to be excepted, the detailed reasons for the exception, and the duration of the exception. Exception requests must be made before the fact. Normally, they should be received at least five days prior to execution. In those cases involving medical practice, the initiator must be the medical director. The program director shall co-sign medical exceptions. The Department shall respond within five working days whenever practicable.
- f) Emergency situations
- In those circumstances where client health and safety are in imminent jeopardy, telephone notification by the respective program director or medical director may be made to the Executive Director, to be followed in writing within 48 hours.

Section 2055.50 Statutory Authorities

- a) Federal regulations
- All persons engaged in drug abuse-associated treatment, care, rehabilitation, education and training programs are subject to the provisions of Federal regulations concerning the receipt, storage, dispensing and administering of controlled substances.
- b) State and local regulations
- It is the sole and exclusive duty of the Department and its designated agents, officers and investigators to investigate all violations of the Act and to cooperate with all agencies charged with the enforcement of the laws of the United States or of any State, relating to the matters pertaining to the Act. Interagency cooperation shall be conducted within the parameters of the Federal and State confidentiality regulations. Nothing in this Part shall bar a grand jury from conducting an investigation of any alleged violation of the Act subject to the provisions of Section 7.1 of the Act; nor shall this Part abrogate the local government prerogatives stated in Subpart A, Section 2055.10. Program personnel involved in the administration or as staff members or as clients are subject to the provisions of the Illinois Controlled Substances Act.

SUBPART B: GENERAL PROVISIONS

Section 2055.110 Incidents of Licensure

- a) Licensed required

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- Except as noted in Subpart A, Section 2055.40, no person shall operate, establish, manage, conduct or maintain any drug abuse-associated care, rehabilitation, education or training program without first obtaining a license from the Department. Nor shall any nonexempt person, entity or activity be permitted to advertise, hold out or represent by any means such drug abuse-associated program without being licensed by the Department and the appropriate Federal authority.
- b) Operation without a license prohibited--violation of State statutes
- The Department may file civil or criminal proceedings against any person operating an unlicensed facility or activity within the purview of this Part. Operation without a license is a petty offense. Each offense, after conviction of a first offense, shall be a Class A misdemeanor. Each day's violation shall constitute a separate offense.
- c) License issuance and duration
- Licenses shall be issued by the Department upon submission of a satisfactor, application, demonstration of adequate staff to meet the professional standards established by the Department, and proof of compliance with all Federal, State and local ordinances, statutes and regulations pertaining to health, safety, zoning and building requirements. The license shall be valid for a period of one year from the date of issuance, unless sooner suspended or revoked.
- d) License nontransferable/nonassignable
- Department licenses are nontransferable and nonassignable.
- e) License to be posted in a conspicuous place
- Department licenses shall be posted on the licensed premises in a conspicuous place.
- f) License renewal
- Every person licensed by the Department shall submit application for renewal 60 days prior to expiration of Department license(s). Application for renewal shall be reviewed to ensure that persons licensed are in compliance with applicable statutes and regulations and are providing the drug abuse services in a manner contemplated in the current operating license.
- g) Grounds for denial, suspension or revocation of license
- The Department may deny, suspend or revoke any license applied for or issued hereunder if the applicant or licensee has:
- 1) Violated any provision of the Act.
 - 2) Violated any rules or standards promulgated by the Department.
 - 3) Violated any Federal or State law relating to the use or abuse of drugs.
 - 4) Violated any State or local law, ordinance or regulation pertaining to all public health, safety, sanitation, building or zoning codes.
 - 5) Submitted false information to the Department which is related and material to the requirements of applying for or holding a license.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- 6) Failed to perform or comply with the procedure for treatment and rehabilitation pursuant to which the program approval was obtained.
- 7) Permitted, on the part of the administration or staff, any unlawful act on the licensed premises.
- 8) Failed to demonstrate reasonably sufficient character relating to honesty and integrity to warrant operation of or continuing operation of a facility or service.
- 9) Had the Federal registration to distribute or dispense methadone or other controlled substance suspended, revoked, refused renewal or refused issuance.
- 10) Had any governmental license or registration relating to the operation of a facility or service licensed under the Act suspended, revoked, refused renewal, or refused issuance.
- h) Past criminal record
A past criminal record is not a bar to employment of an individual in a program. Prior offenders must demonstrate adequate rehabilitative performance commensurate with the type of employment and responsibilities to be assumed. A one-year period prior to employment free from any felony conviction or incarceration therefor shall be the minimal standard to safeguard program employees and clients, to promote security within the program, and to permit demonstration of rehabilitation. Request for exceptions to this Part must be made in writing to the Department indicating the individual concerned, his job designation, skills offered, and basis for the request. Such exceptions are to be signed by the board chairman and program director. Individuals enrolled as clients in treatment programs should not be employed on the clinic program staff. Cumulative convictions for misdemeanors or ordinance violations shall be given proper consideration in hiring or retaining program personnel.
- i) Surrender of license
Any license issued shall be surrendered to the Department immediately after final determination of suspension or revocation thereof, upon discontinuation of the operation of the treatment program, or upon denial or revocation of registration or program approval by Federal authorities. License surrender does not bar continuation of criminal or civil proceedings instituted against the program or its administration or staff. License return shall be made in person or by certified mail.

- j) Action on suspension
When a license is suspended, the medical director, his authorized agents, and representatives of the Department will cause a joint inventory of all controlled substances to be made and secured with the substances in the prescribed storage container. The container will be secured against entry until the circumstances surrounding the suspension are resolved. If more than one week is to be encountered in the resolution process, the controlled substances will be removed by the Department for safekeeping. The program director will

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- acknowledge the joint inventory and disposition of the controlled substances. A similar inventory and securing of clinical records shall be accomplished.
- k) Action on revocation
When a license is revoked, the medical director, his authorized agents, and representatives of the Department will cause a joint inventory of all controlled substances to be made and secured with the substances. The Department will remove the controlled substances from the former licensed premises and furnish a suitable receipt for them. The program director will acknowledge the joint inventory and disposition of the controlled substances. Confiscated drugs will be secured by the Department. A similar inventory and securing of clinical records shall be accomplished. Clinical records may be transferred to a new program as required.
 - l) Changes of ownership, administration or location
1) Notice of proposed changes of ownership, administration or location shall be furnished to the Department in writing a minimum of 90 days before anticipated execution. In the case of unavoidable incidents such as riots, insurrection, war, pestilence, fire, lightning, earthquake, cyclone or other causes entirely beyond the control of the program that could not have been reasonably anticipated or adequately guarded against, the program shall notify the Department within 48 hours by telephone and within seven days in a written report of the incident(s).
 - 2) The Department will, upon appropriate review, revalidate or revoke the existing license.
 - m) Separate annotation of license for each modality
Separate annotation of licenses shall be required for each modality maintained in a single location or in separate locations even though operated under the same program.
 - n) License fees
License fees shall be charged on the basis of \$25 per annum per primary modality. License fees shall be due on application for initial license and with renewal. License fees will also be due with application for changes of ownership. License fees will not be returned. All fees will be paid into the State Treasury and placed in the general revenue fund.
 - o) Client fees
Charges to clients by programs shall be in accordance with a schedule established by the program. Such fee schedules shall be presented to each client on enrollment and maintained readily available for review.
 - p) Subterfuge
The license shall be in the name of the true party of interest; no applicant or licensee shall act as a subterfuge for another person. Proof of subterfuge shall constitute basis for revocation of the license.

Section 2055.120 Application for License

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

a) Applicant information

- 1) Any activity or entity desiring to obtain a license shall file with the Department a certified application which shall contain the following information:

A) Sponsor data

- i) Name and residence address of program sponsor
- ii) Name of individual sponsor chief operating officer with personal data to include date and place of birth, sex, race, social security number, occupation and residence address. An individual's social security number is solicited for the purpose of verifying his/her identity and related personal information required under this Part. The disclosure of an individual's social security number is voluntary, and its solicitation by the Department is authorized by Section 27(a) of the Act.
- iii) If applicant is corporation, association or partnership, the name, date and place of birth, sex, race, social security number, occupation and residence address of all principals; e.g., officers and stockholders owning more than five percent of the outstanding shares. An individual's social security number is solicited for the purpose of verifying his/her identity and related personal information required under this Part. The disclosure of an individual's social security number is voluntary, and its solicitation by the Department is authorized by Section 27(a) of the Act.

- iv) Current list of board of directors.

B) Program data

- i) Name and primary operating location of program or facility.
- ii) If applicant is a corporation, association or partnership, a copy of articles of incorporation and/or constitution and bylaws or partnership agreement is required.
- iii) Sources of all program funding.
- iv) Name and residence address of owner of facility premises if applicant is leasing or renting. A copy of agreement to lease or rent to house a treatment program for a period of not less than 12 months.
- v) A physical description and schematic diagram of the facility.
- vi) Name and address of State approved laboratory performing toxicology services.
- vii) Statement of assurances that take home medication is dispensed in child-proof containers as required by regulation.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- viii) Copies of agreements with hospitals and others concerning referral of clients for treatment or ancillary services, to include a formal documented agreement between the program sponsor and responsible hospital official.
- ix) A copy of the program protocol detailing services to be provided for and/or treatment regimen to be followed, including admission, exclusion and discharge criteria.
- x) A statement of the approximate number of clients to be served by the program in any one week, and a forecast of the number to be served in a 12-month period.
- xi) An outline of the current year in-service training program.
- xii) An outline of the current year's plan related to vocational rehabilitation/habilitation efforts.

C) Staff data

- i) Name, date and place of birth, sex, race, social security number, educational institutions attended, occupation and residence address of all staff members or consultants. Name changes shall be indicated. An individual's social security number is solicited for the purpose of verifying his/her identity and related personal information required under this Part. The disclosure of an individual's social security number is voluntary, and its solicitation by the Department is authorized by Section 27(a) of the Act.
 - ii) A summary of the scientific training, education and experience of each physician and all other professional personnel having major responsibilities for the program and rehabilitative effort. Professional licenses shall be indicated.
- 2) Applicants must include in their application a summary of their proposal to meet existing statutory requirements concerning the safeguarding and handling of controlled substances and client records to prevent diversion, loss or theft. Implementation shall be required within 30 days of approval of initial license application or the license shall be administratively suspended. No controlled substances shall be accepted for storage on the licensed premises until a security inspection has been accomplished and approved by the Department.
 - 3) Applicants may furnish such additional information as is deemed appropriate by applicant to support the application.
 - 4) Specific application forms for methadone modalities may be obtained from the Department. Applicants must also complete the requisite Federal forms if methadone is to be used. One copy of each applicable Federal form shall be filed with the Department. An indicator of applicable forms is attached herein as Annex B.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- b) Proof of compliance with other laws
Applicant shall submit proof of compliance with all applicable Federal and State laws for the handling and dispensing of drugs and all State and local health, safety, sanitation, building and zoning codes.
- c) Requirements for additional information
The Department may require such additional information as is deemed appropriate for the proper administration of the application and the proposed program. This shall include but is not limited to additions or deletions in staff personnel or sponsors.
- d) Verification of applications
The Department shall verify through appropriate inquiry the data furnished by applicants in the course of their requests for licenses. Submission of an application carries implied consent to permit inquiry into the data furnished. Applications will embody appropriate waivers to permit release of information from governmental and private agencies.
- e) Background inquiry
The Department shall conduct such inquiry into the background of sponsor and administrative and staff personnel as might be required to assure that those individuals satisfy the licensing standards indicated in Subpart B.

SUBPART C: REPORTS AND RECORDKEEPING

Section 2055.210 Records

- a) Records to be maintained
 - 1) The records shall be filed systematically and shall be available for inspection and audit within the parameters prescribed by applicable Federal and State regulations and herein. Operating records, to include business and financial data concerning administration, staff, personnel, clinical practice, drug dispensing, and clients, shall be maintained for a period of three years. Special emphasis shall be given to ensuring that clinical records are legible and accurately reflect client progress and medication usage to include justification for medication changes. Client records shall be maintained in their entirety for a minimum of three years subsequent to client termination and shall be destroyed not later than seven years after the client's affiliation with a specific program is terminated.
 - 2) Accurate time and attendance records for employees and consultants shall be maintained and made available for inspection to Department representatives.
- b) Continuity of client records
With client consent, copies of client's clinical records and progress evaluations shall be transferred to follow the client in the event of client relocation or transfer to another program within the State.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- Records and/or summary exchanges shall be initiated only after the gaining program requests the record in writing. However, necessary medical information pertaining to dosage rates and dates of enrollment may be exchanged verbally between programs. Such information exchanged must be confirmed, in writing, no later than five (5) days after the oral communication. In the event the client objects to a record exchange, the medical record or summary shall not be forwarded.
- c) Confidentiality of client records
 - 1) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse function authorized or assisted under any provision of the Act shall be confidential and may be disclosed only for the purposes and under the circumstances expressly authorized by subsection (c)(2) of this Section.
 - 2) Authorized disclosures:
 - A) The content of any record referred to in subsection (c)(1) may be disclosed in accordance with the prior written consent of the client with respect to whom such record is maintained only as follows:
 - i) To medical personnel for the purposes of diagnosis and treatment of the client;
 - ii) To the client's attorney;
 - iii) To governmental or private officials for the purpose of determining the client's eligibility for or entitlement to benefits related to his drug addiction or abuse;
 - iv) To such extent, under such circumstances, and for such purpose as may be allowed under any rule or regulation prescribed by the Department;
 - v) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause, the court shall weigh the need for disclosure against the possible harm to the client, to the physician-client relationship, and to the treatment services. In granting such an order, the court shall limit disclosure to that portion of the record necessary to meet the need for the record of information and shall impose appropriate safeguards against unauthorized disclosure.
 - B) Whether or not the client, with respect to whom any given record referred to in subsection (c)(1) of this Section is maintained, gives his written consent, the content of such record may be disclosed as follows:
 - i) To medical personnel to the extent necessary to meet a bona fide medical emergency;
 - ii) To qualified personnel for the purpose of conducting scientific research, management, audits, financial

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- B) Name and title of individual obtaining the information.
- C) Purpose for which client information is obtained.
- D) Disposition of the information - The Department shall furnish the program a written statement upon final disposition of the record, indicating Department compliance with this Part.
- 7) After the purpose of retaining a record identifying a client has been served, that record and all copies shall be either destroyed, sent back to the program, or retained no more than two years after the record was acquired by the Department, whichever is earlier. Where the record is needed in connection with formal legal proceedings against the program commenced or to be commenced, the record may be retained until the termination of the proceedings.
- 8) Each record retained by a program which contains client information which is the subject of this Part must be secured in a locked container and measures must be taken to preclude unauthorized access.

Section 2055.220 Reports

- a) Regular reports
Licensees will submit reports stipulated within this Part as enclosures to applications for licensure and renewal. An information copy of the FDA-required Annual Report for Treatment Programs using methadone shall be furnished the Department within 28 days of the end of the reporting period.
- b) Special reports
1) Licensees will submit pertinent reports of significant incidents within 24 hours or discovery to the Department and additional authorities as indicated herein:
 - A) To DEA--Loss of or inability to account for controlled substance stocks--immediately on discovery.
 - B) To local law enforcement agencies--Alleged or actual criminal activity occurring on the premises--immediately on discovery. NOTE: Accused perpetrators may not be identified as program clients.
 - C) To FDA--Any client death considered methadone-related, using form FD-1639, "Drug Experience Report"--within two weeks.
 - D) To FDA--The birth of any child to a female client if the newborn is premature or shows any adverse reactions, to include withdrawal symptoms, which in the opinion of the attending physician are due to methadone, using form FD-1639, "Drug Experience Report"--within one month of the birth.
 - E) To FDA--A detailed account of any adverse reactions, using form FD-1639, "Drug Experience Report"--within two weeks.
- 2) Preliminary telephonic notification of significant incidents to

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner;
- iii) To agents and the investigative personnel of the Department or appropriate Federal agencies for the purpose of conducting compliance inspections of programs operating within the purview of the The Act to ensure adherence to applicable Federal and State statutes regarding, inter alia, the handling and dispensing of controlled substances.
- iv) Without consent of an incompetent client or in the case of a deceased client - The content of the client's record may be disclosed to government personnel as is required to be collected under Federal and State law. With the consent of the client's immediate family, i.e., father, mother, sister, brother, wife, son or daughter, the content of the client's record may be released to third parties. The manner in which consent is given shall be in accordance with this Part and shall be made in writing, in the client's name, by the family member executing such consent.
- C) Any disclosure authorized under subsection (c)(2) of this Section shall be limited to that part of the record necessary to satisfy the purpose for which the record is sought. A person or agency to whom the record is disclosed shall not disclose the record or any part thereof to another person or agency.
- 3) No record referred to in subsection (c)(1) of this Section may be used, obtained by judicial process or otherwise, or admitted into evidence in any proceeding in order to initiate or substantiate any criminal charges against a client or to conduct any investigation of a patient. The prohibitions of this paragraph shall not be subject to waiver by any person.
- 4) The prohibitions of this Part apply to records concerning any individual who has been a patient, regardless of whether or when he ceases to be a client.
- 5) Except as authorized under subsection (c)(2) of this Section, any person who discloses the contents of any record referred to in subsection (c)(1) of this Section shall, upon conviction, be guilty of a Class C misdemeanor.
- 6) A written notice from the Department or its designated agents, officers and investigators shall be furnished to the program for client identifying information to be retained by the Department. The statement shall set forth the following:
 - A) Description of information obtained.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

the Department is desired.

- c) Supplemental reports
Additional reports may be required as the Department deems necessary.
- d) Annual audit reports
Each person licensed under this Part who has expenditures in excess of \$5,000 per annum for programs within the purview of the Act shall have an annual audit conducted by a public accountant registered in the State. A copy of the audit shall be furnished to the Department within 30 days of the accountant's submission to the program.
- e) Management information reports
Empirical data provide a valuable basis for administrative and financial decision-making and resource allocation. Accordingly, each person operating under this Part shall develop and maintain such management information as may be prescribed by the Department. Operators shall furnish the such information as an attachment on the occasion of license renewal or as otherwise requested by the Department.

SUBPART D: INSPECTIONS AND INVESTIGATIONS

Section 2055.310 Inspections

- a) Compliance inspections
 - 1) Compliance inspections shall be conducted to enforce lawful requirements imposed with respect to the operation of treatment programs employing controlled substances or subject to this Part.
 - 2) Upon issuance of a Notice of Inspection and presentation of Department credentials, investigators and compliance officers of the Department shall be permitted access to inspect all areas and records of the program. Notice of Inspection format is attached as Annex C. Formal acknowledgement will be recorded on the reverse of this notice.
 - 3) Department representatives acting as auditors shall be granted access to all records for the purpose of conducting program evaluations.
- b) Client confidentiality
Access to client records during compliance inspections shall be solely for the purpose of evaluating programs, conducting an audit of drug stocks, and verifying the issuance of drugs under the treatment program. Identification of records required for reporting purposes will be by client number only.
- c) Security of drug stocks
 - 1) Adequate security shall be maintained over the drug inventory, over the name in which they are administered or dispensed to prevent disclosure of the client, over the manner in which they are distributed to medication unit, and over the manner in which they are stored to guard against theft and diversion. The security standards for the distribution and storage of controlled

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

substances must provide for physical and electronic measures.

- 2) A maximum of seven operating days' supply of controlled substances may be retained on hand, unless specific exception to exceed is issued by the Department.
- d) Physical security standards
 - 1) Controlled substances shall be stored in one of the following secure storage areas:
 - A) A safe or steel cabinet which:
 - i) Shall provide an equivalent of 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, or 20 man-hours against radiological techniques. (Safes classified as Federal GSA Class 5 or commercial Class TL-15 satisfy this standard.)
 - ii) If it weighs less than 750 pounds, shall be bolted or affixed to the premises in a manner to prevent removal.
 - iii) Shall be equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or police agency which has a legal duty to respond, or other such protection as the Department may approve.
 - B) A vault constructed before September 1, 1971, which is of substantial construction with a steel door, combination or key lock, and an alarm system.
 - C) A vault constructed after September 1, 1971, in which:
 - 1) The walls, floors and ceilings shall be constructed of at least eight inches of reinforced concrete vertically and horizontally with one-half inch steel rods tied six inches on center or the structural equivalent to such reinforced walls, floors and ceilings.
 - 2) The door and frame unit shall provide the equivalent of 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques.
 - 3) If operations require that it remain open for frequent access, shall be equipped with a "day gate" which is self-closing and self-locking, or the equivalent, for use during the hours of operation in which the vault door is open.
 - 4) The walls or perimeter shall be equipped with an alarm which, upon attempted unauthorized entry, shall transmit a signal directly to a central station protection company or police agency which has a legal duty to respond, or other such protection as the Department may approve.
 - 5) The doors shall be equipped with contact switches.
 - 6) It shall have one of the following: complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or other

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

such device designed to detect illegal entry as may be approved by the Department.

D) All facilities shall have one or more hold-up buttons in the dispensing area.

e) Access to storage areas
Access to drug storage areas shall be limited to: those individuals specifically licensed under law and designated in writing as authorized to dispense controlled substances; required security system maintenance personnel when under escort scrutiny by an authorized dispenser; and investigators, compliance officers, or auditors of the Department during the performance of their official duties when accompanied by an authorized dispenser.

f) Security of controlled substances during transmittal to program sites
Transmittal of controlled substances to and from the licensed premises or to another location for any reason, other than in the form of individual take-home dosages in the hands of the prescribed client, should be accomplished by bonded service or legally authorized armed escort licensed by the State. Exceptions are allowed in that:

1) Practitioners may transport up to a maximum of 400 mg. of methadone in prepared dosages for delivery to clients unable to present themselves to the clinics.

2) Investigators may transport controlled substances for sampling purposes or in the case of seizure.

Section 2055.320 Investigations

a) Purpose of investigations

Investigations shall be conducted by the Department and its investigators to serve and protect the health, safety, rights and welfare of the People of the State of Illinois.

b) Client confidentiality

Access to client records during the course of investigations shall be restricted to those circumstances which serve the interest of the client and the public welfare. Client provided information with written client consent may be incorporated in resultant reports. Any information obtained is prohibited from being used against the client in any civil or criminal proceedings. The intent of this Part is to enable the Department to:

1) Ensure that clients are enrolled in programs on a voluntary basis.

2) Ensure that clients are retained in programs on a voluntary basis.

3) Conduct investigations on adverse effects information related to use of the controlled substances.

4) Conduct management and financial audits or program evaluations for the purpose of enforcing lawful requirements imposed with respect to the operation of treatment programs employing controlled substances or other programs subject to this Part.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

5) Conduct investigations into alleged violations of statutes by program.

c) Access to operating and administrative records, facilities and equipment

Department investigative personnel, compliance officer and auditors will be granted access to appropriate facility and service areas, vehicles and equipment, personnel clinical records, business and financial data to permit the accomplishment of a proper operating audit.

Section 2055.330 Collection and Seizure

a) Department sampling authorized

In the course of an inspection or investigation, Department investigators may be required to obtain drug samples in the furtherance of their duties. Such samples shall be released by the person or program being inspected and a receipt furnished by the investigators.

b) Seizures authorized

When in the course of an inspection or investigation it is evident to the investigator that inadequate physical security for drugs exists, or the handling of controlled substances is such as to endanger the health and safety of clients or the People of the State of Illinois, the investigator may seize all controlled substances on the premises and transport them to a safe place. A triplicate receipt for the seized materials will be prepared by the investigator and a copy furnished to the responsible party at the point of seizure. In the event of seizure of drug stocks, arrangements for continuity of client treatment must be considered as outlined in Section 2055.30 (b).

SUBPART E: CLINICAL PROCEDURES

Section 2055.410 General

a) Program admission

1) The process of initiating services to an individual shall take place as soon as possible after the individual applies to the program (three days is optimal) and shall include:

A) A complete personal history: family, educational, vocational, medical, legal, and related areas; also a drug history, including kinds of drug used and abused, when begun, prior treatment attempts, and other related information.

B) The identification of the individual's specific needs.

C) The determination of treatment services most appropriate for the individual's need.

D) The program's decision as to its capability to provide the needed services.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- E) A description of the proposed services to the individual, including alternative programs which may be geographically closer to the individual's residence or which provide a more appropriate range of service.
- F) The referral to another program or community services mutually agreed upon by the program and the individual.
- G) A physical and laboratory examination when indicated.
- 2) Any part of a physical or laboratory examination completed by Central Intake need not be repeated unless the results of the examination are incomplete or questionable.
- b) Modality applicability
- 1) The regulations and guidelines presented in Section 2055.420 are general and apply to methadone, transitional care, outpatient drug-free and residential programs only.
 - 2) The regulations and guidelines presented in Sections 2055.430 through 2055.490 inclusive herein are modality specific and (in the case of methadone, transitional care, outpatient drug-free, and residential programs only) are in addition to the regulations and guidelines in Section 2055.420. The only standards which are applicable to other types of programs are presented in Section 2055.460 through 2055.490.
- c) Consideration of client special needs
- Written request for exception to a specific clinical regulation, when consistent with the client needs, may be granted as indicated in Section 2055.40. Requests should be addressed to the Department.
- d) Admission interview

The admission interview is required for all clients. It is regarded as the first step in treatment for all treatment modalities. A primary purpose of the admission interview is to determine whether the selected mode of treatment is the most appropriate for the client and to ensure that the client understands the nature of the program and the program's expectations. A primary counselor shall be assigned to each client on determination of the appropriate treatment regimen.

- e) Staff qualification
- All personnel shall be qualified by virtue of education, experience or supervised training for all therapy methods which they employ. Clinical personnel shall be capable, within their respective qualifications, of assessing the psychological and sociological background of drug abusers to determine an appropriate treatment plan for clients.

- f) Use of volunteers
- Volunteers, when used, shall be screened for suitability and competency with respect to their prospective function and shall be provided with appropriate training and supervision.

- g) Program operating manual
- A program shall develop and maintain a manual of its internal operating procedures. The procedures shall be sufficiently clear to be easily understood and provide sufficient detail to accurately

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

reflect all administrative and clinical policies of the program and shall include By-laws of the corporation, minutes, and any other rule, regulations or custom bearing on clinic operation. The manual shall be updated every six months and the staff review of the update recorded.

- h) Program internal assessment
- A program shall develop and implement a modest plan for ongoing internal assessment of the effectiveness of its program. Such a plan shall include some adequate system of receiving client and community response to services provided. Information received through this system shall be reviewed regularly by the program's internal supervising authority. The results of the review shall be recorded and maintained. The plan is subject to review by the Department.

- i) Program medical director
- The program shall designate a medical director who must take medical responsibility for the program and be licensed in the State. The medical director shall ensure that the initial evaluation is appropriately performed; that the medical needs of individual clients are periodically assessed; met, and/or referred; and that emergency medical services are provided when appropriate. For those clients receiving prescription medication (other than methadone) through the program, contact with a program physician is required at least once every 30 days or more frequently.

Section 2055.420 Methadone, Residential, Transitional Care, and Outpatient Drug-Free Programs

- a) Client admissions, exclusions, and terminations criteria
- The admission criteria are required and are applicable only for those individuals with a primary drug abuse problem other than alcohol. Such criteria shall be included in the license application submitted to the Department. Services to a client must be terminated whenever there is evidence that the level or services does not meet the requirements of this Part or where legitimate, person-to-person services are not provided at least once per month on a regularly schedule basis. In any case in which a decision is made that Client's treatment is to be terminated or substantially changed by the program director, the client shall be given written notice of this fact and has the right to have this decision reviewed in accordance with procedures established for that purpose.

- b) Intake protocol
- Intake protocol shall be developed by each license applicant. At intake, initial personal, medical and drug histories must be taken by appropriately trained and experienced intake coordinators or medical practitioners. It is important that the intake process be conducted as rapidly as possible so that clients are not discouraged from pursuing treatment. An intake not exceeding three days is optimal. The purpose of taking medical and drug histories is to prepare the

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

best possible treatment plan for the client.

- c) Intake physical and laboratory examination
 - 1) At intake, a detailed medical history, a physical examination, and a laboratory examination shall be done for all methadone and residential treatment clients. Outpatient drug-free programs may use the review by the program physician within 30 days of admission of a detailed medical history to determine the need for intake physical and laboratory examinations. The program physician's determination that physical and laboratory examination is required, the parenteral use of any drug, and the habitual use of opiates or barbiturates administered by any route require physical and laboratory examinations. This requirement will not be waived. The program's physician's annotated medical review of a physical and laboratory examination done within the six months prior to admission or documented care by another physician who assumes the medical responsibility for the client may be substituted for the program's physical and laboratory examination by the program physician. Transitional care programs shall follow the applicable standards for methadone or drug-free intake physical and laboratory examinations.
 - 2) The matrix in Appendix C may be used in determining program physical and laboratory admission procedures.
- d) Physical and laboratory examination components

Physical and laboratory examinations shall consist of the following:

 - 1) Investigation of the possibility of: infectious disease; pulmonary, hepatic or cardiac abnormalities; dermatologic sequelae of addiction; and possible concurrent surgical problems.
 - 2) Complete blood count and differential
 - 3) Serological test for syphilis
 - 4) Routine and microscopic urinalysis
 - 5) Urine screening for drugs (toxicology)
 - 6) Multiphasic chemistry profile
 - 7) Chest X-ray or Mantoux skin test
 - 8) Australian antigen HBsAg testing (HAA testing) as appropriate
 - 9) EKG and biological tests for pregnancy as appropriate
 - 10) Referral made for Pap smear if one has not been done within the last 12 months
- e) Individual client treatment plan

An individual treatment plan shall be developed in conjunction with a physician for each client upon admission to treatment, and such plan shall be reviewed and redetermined by the treatment team with the client, no less than every 90 days, for methadone programs and, no less than every 60 days, for residential and transitional care programs. In outpatient drug-free programs, the treatment plan shall be developed in conjunction with a physician when this is appropriate and shall be recorded in each client record. Every treatment plan shall include documented evidence of:

 - 1) A statement of short and long-term goals for treatment generated

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- by both staff and client.
- 2) The assignment of a primary counselor.
- 3) A delineation of the type and frequency of counseling services to be provided.
- 4) A delineation of those supportive services needed by the individual client.
- f) Program service agreement with hospitals

A formal written agreement shall exist between the program and a licensed hospital(s) or medical center in the community for provision of emergency, inpatient and ambulatory medical services as appropriate.
- g) Mental health consultation

At least five hours per week of professional mental health consultation per 100 clients shall be provided. The purpose of this consultation is not only to review selected cases, but also to provide assistance to staff in client management, in-service training or referral for psychiatric/psychological/alcoholism services.
- h) Availability of counseling services

In methadone or outpatient drug-free modalities, a minimum of three hours of group, family or individual counseling per week shall be available for each client. In residential and transitional care modalities, a minimum of 10 hours of formalized counseling per week shall be available for each client. A variety of counseling techniques may be utilized in individual, family or group counseling sessions conducted by an appropriately qualified and experienced professional. In any group counseling situation, the size of the group may, in general, range between five and 15 individuals.
- i) Support services and client enrollment
 - 1)
 - A) The following support services shall be made available to clients either on an in-house or a referral basis. If provided through referral, documentation of available referral services shall be provided to the Department.
 - i) Psychiatric/psychological
 - ii) Laboratory
 - iii) Medical
 - B) Neither the program sponsor nor the hospital is required to assume financial responsibility for the client's medical care.
 - 2)
 - A) In addition to the provisions of the services listed above, all programs shall develop a plan for the provision of the following additional support services. Such a plan shall be available for Department review and shall include appropriate agreements for the provision of these services when they are not provided by the program.
 - i) Education
 - ii) Vocational Rehabilitation

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- iii) Job development and placement
- iv) Financial counseling
- v) Legal services
- vi) Recreational activities
- vii) Individual and group counseling for spouses, parents and/or significant others.
- viii) Child care

B) Every client enrolled in residential care for more than 60 days and every client enrolled in methadone, outpatient drug-free, or transitional care for more than 120 days shall be encouraged to enroll in either an educational or job training program or to seek gainful employment.

j) Laboratory proficiency compliance
Urine testing machines and laboratories used for urine testing, regardless of the use of presumptive or qualitative analysis, shall comply with all U.S. Department of Health, Education, and Welfare Center for Disease Control proficiency testing programs.

k) Urinalysis results
Urine testing results shall be recorded in individual client clinical records and used as a diagnostic tool, in client management, and in the determination of client treatment plans. Client records shall reflect the manner in which test results are utilized.

l) Client records
Every program shall establish a client record-keeping system to document and monitor client care. This system shall comply with all State and Federal reporting and confidentiality requirements. Such records shall include but not be limited to evaluation at admission, appropriate treatment planning, client progress, referral information, follow-up notes and discharge summary.

m) Program response to service
Every program shall maintain some reasonable system of receiving feedback on services provided. Information received through this system shall be regularly reviewed by the program's internal supervisory authority. The program shall have a plan for continuation of services in emergency situations.

n) Program service representation
Program service shall not be misrepresented. The program shall be ready to provide all advertised services during advertised hours. Appropriate staff shall be available either at the facility or on call during normal operating hours. The program shall have a mechanism for response to emergency situations.

o) Program effort to meet client need
An effort shall be made to gear the program's hours of operation to client need, and the hours of operation shall be conspicuously displayed. For outpatient programs, consideration shall be given to those clients who are employed and consequently need to be able to visit the clinic outside of working hours. Clients who are not employed or involved in school or training programs are expected to

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

schedule other activities around clinic hours. The traditional nine-to-five workday regimen is not adequate for outpatient treatment. In some clinics, 12-hour clinic operations may prove necessary.

p) Minimal hours of operation
The minimal hours of operation specified below shall be maintained;

1) Outpatient methadone--No less than seven days per week; five days per week at eight hours per day (in all cases, at least two hours per day must be outside 9:00 a.m. to 5:00 p.m.) and two days per week at four hours per day, to the end that medication services are available within the catchment area.

2) Residential--No less than seven days per week, 24 hours per day.

3) Transitional care--No less than six days per week, 10 hours per day.

4) Outpatient drug-free--No less than six days per week, five days per week at eight hours per day (in all cases, at least two hours per day must be outside 9:00 a.m. to 5:00 p.m.) and one day at five hours.

5) The specific hours of operation for all programs shall be posted. In the case of methadone maintenance programs, the hours of physician-client care and medication dispensing shall be displayed prominently, and in areas common to all persons concerned.

q) Follow-up
Programs shall develop, as a part of their internal assessment process, specific follow-up procedures which reflect client need. Follow-up efforts shall be documented. Follow-up may include letters, telephone contacts, or face-to-face meetings.

r) Capacity
A program shall estimate its approximate service capacity in terms consistent with services to be offered, facility size, and staff or volunteer patterns. Such information shall be made available to the Department.

s) Client referral
All program shall develop and maintain an adequate system for referral of clients for services unavailable at the facility. Programs shall develop and maintain a current listing of agencies, organizations and individuals to whom referrals may be made, and a brief description of the services available from these sources. A record of all referrals made to or received from other service sources shall be maintained. Generally, programs from whom referrals are received shall be notified at intake of a client referred by them, providing the client has given written consent.

Section 2055.430 Methadone Treatment

a) Methadone facility accommodations
The methadone treatment facility shall be large enough to serve comfortably the number of clients it currently has or proposes to have

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

in treatment. The facility shall include a waiting area, a physician's office and examination room, and a dispensing area with a methadone dispensing window or counter meeting the minimal security requirements as outlined in Section 2055.310 (d). It may also have individual offices for the clinic supervisor, counselors and other treatment personnel. Adequate space shall be available for private (individual, family and group) counseling and conference purposes.

- b) Physical security
Physical security of controlled substances shall be as outlined in Subparts B and D.
- c) Submission of client capacity
The program sponsor shall submit to the Federal authorities and Department an approximation of its client capacity based on demonstrated community need, reasonable facility size, staffing pattern, and budgetary constraints as required by Form FP-2632, "Application for Approval of Use of Methadone in a Treatment Program."

d) Admission procedures

The following admission procedures shall be observed:
1) Each client shall be fully informed concerning the possible risk associated with the use of methadone. A physician or other licensed practitioner under the supervision of a physician shall ensure that all relevant facts concerning the use of methadone are clearly and adequately explained to the clients and that all clients (including those under age 18) sign, with full knowledge of its contents, the first part of Form FP-2635, "Consent for Methadone Treatment," and that the parents or guardians of clients under age 18 sign the second part of the form. Special attention shall be given to those female clients of childbearing age to ensure completion of that designated portion of the form. The screening process by which client intake is accomplished must be detailed. No client is to be admitted to a methadone program until it has been verified that the client meets all applicable admission criteria and that the sources and methods of verification have been recorded in the client record.

3) The screening process shall include:

- A) Verification of an applicant's identity (name, address, date of birth and place, or other identifying data).
- B) Determination of opiate or opiod addiction (physical examination performed by physician to determine opiate usage; laboratory evidence--urinalysis for drug abuse). Positive urine results are not necessary criteria for admission. Additional evidence may be obtained by noting the presence of old and fresh needle marks and by obtaining additional history from relatives and friends.
- C) Determination that an applicant is not presently receiving methadone treatment in another program. Documentation must be included in the client's intake record that each client has been fully informed that it is a violation of State and

Federal law to obtain methadone from more than one treatment program by means of misrepresentation, fraud, forgery, deception or subterfuge.

e) Client admission criteria

- 1) Care shall be exercised in the selection of clients to prevent the possibility of admitting a person not dependent upon heroin or other morphine-like drug for at least two years prior to admission to maintenance treatment. No methadone shall be administered unless the client has been determined to be an opiate addict and has undergone all the screening and admission procedures. The mere use of a narcotic drug, even if periodic or intermittent, cannot be equated with narcotic addiction. Those with less than two years history of opiate dependence, unless specifically authorized for admission by Department and Federal authority, are appropriate for detoxification and other services only.

- 2) Methadone maintenance treatment of clients between the ages of 16 and 18 years shall be permitted only with a documented history of two or more unsuccessful attempts at detoxification and a documented history of dependence on opiates or other opioids beginning two years or more prior to admission for treatment, and with the consent of a parent, legal guardian, or responsible adult designated by the Department. Such consent shall be accomplished by completion and signature of Form FP-2635, "Consent to Methadone Treatment." Clients under age 18 who are not placed on maintenance treatment may be detoxified. Detoxification may not exceed 21 days. A repeat episode of detoxification may not be initiated until 28 days after the completion of the previous detoxification.

f) Withdrawal signs detailed

A complete drug history and evidence of current physiological dependence on morphine-like drugs shall be documented. Evidence of physical dependence shall be obtained by noting early signs of withdrawal (lacrimation, rhinorrhea, pupillary dilation, and piloerection) during the initial period of abstinence. Withdrawal signs shall be observed during an initial period of hospitalization or while the individual is an outpatient undergoing diagnostic evaluation (e.g., medical and personal histories, physical examination, laboratory studies). Loss of appetite and increased body temperature, pulse rate, blood pressure, and respiratory rate are also signs of withdrawal, but their detection may require inpatient observation. It is unlikely that an individual would be currently dependent on narcotic drugs without having a positive urine test for one of more of the narcotic drugs. Visible physical signs of nasal heroin ingestion are edema, erythema, and/or perforations of the nasal mucosa.

g) Waiver of required drug dependency

- 1) Waiver of the requirement for evidence of current physiological dependence on narcotic drugs for regulatory mandated time periods

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

shall be allowed only under the following circumstances:

- A) Maintenance treatment may be indicated prior to or within one week of release from a stay of one month or longer in a penal or chronic care institution, and the individual has a predetention history of dependence upon heroin or other morphine-like drugs at least two years prior to admission to the institution.
- B) Pregnant women, regardless of age or prior addiction history, but otherwise eligible for maintenance treatment, may be placed on a maintenance regimen if the Medical Director certifies the woman to be pregnant and certifies that there exists medical justification for such treatment. Within six weeks of the termination of the pregnancy, the physician shall enter an evaluation of the client's condition into the client's record indicating whether she should remain on maintenance or be detoxified.
- 2) The attending physician shall apply, through the program, to the Department and Federal authority for approval, detailing the basis for the exception prior to enrolling the client in any maintenance regimen. Justification for any such waiver shall be noted in the client's record.

h) Admission denial

Where admission is denied, the rationale for denial shall be documented and shall be made available to the Department. The program shall make every attempt to secure an appropriate referral, and these attempts shall be documented. If, in the professional judgment of the medical director, a particular client would not benefit from methadone treatment, such treatment may be refused even if the individual meets the admission standards.

i) Pregnant clients and newborns

Pregnant, narcotic-addicted women and their offspring shall be given special consideration. They constitute a serious health and life-risk group within the addicted population. Many of these women suffer medical and obstetrical complications due to both their addiction and the effect this has in drawing their attention away from concern for their health, nutrition, prenatal care, psychosocial needs, and responsibility toward their expected infants. Their babies, like those of untreated heroin addicts, often suffer, too. While some babies are affected by severe neonatal withdrawal, others are faced with uncertain care and unstable home environments. Many addicted mothers are unable to cope with their babies, whom they describe as "irritable, hyperactive and demanding." The emotional problems which can complicate these pregnancies, especially anxiety and depression, are often aggravated after childbirth and may require weeks or months of intensive therapy and/or assistance (including provision of visiting nurses, homemakers, etc.). It should be the aim of all programs to secure the early identification of all pregnant addicts both upon intake and during the course of treatment. While this is

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

the responsibility of both staff and client, it is primarily the counselor's responsibility to identify their pregnant clients and arrange for a comprehensive range of services if the client does not have them available to her. Staff should be aware, too, that exceptions may be obtained for pregnant women in terms of meeting FDA eligibility for methadone maintenance treatment.

j) Program range of services

A methadone program shall provide a comprehensive range of medical and rehabilitative services to its clients. These services shall normally be provided at the primary facility. The program sponsor may enter into formally documented agreements with other public or private agencies, institutions or organizations to render these services. Such facilities shall be located so as to provide ease of access to the client. Any service not furnished at the primary facility shall be listed, and the agreements to furnish those services shall be documented by a letter of agreement to include method of linkage and follow-up mechanism when application for approval is submitted to the Federal authority and Department. Modifications of the services shall be submitted in triplicate to the Federal authority and Department. In addition, a program shall provide a comprehensive range of rehabilitative, on-site services under professional supervision, to include individual counseling, group counseling, and vocational counseling. Referral of clients for services, follow-up information, and reports shall be entered in the client's record. In addition, when the clinic administrator/case supervisor determines that a client requires more sophisticated services than are available at such program, the clinic administrator/case supervisor may refer such client to other individuals or agencies with whom formal agreements have been made for the provision of such services, including as a minimum: surgical, psychiatric, family planning, child placement, marriage counseling, family therapy, psychological consultation, and legal assistance. The records of the methadone treatment program may contain documentation that such additional agreements exist.

k) Administration of methadone

No dose shall be administered or dispensed until the client has been identified and the dosage compared with the currently ordered and documented dosage level. Ingestion of methadone shall be observed by the qualified person authorized to administer the medication. Only oral liquid methadone is to be administered and/or dispensed. Take-home bottles shall contain individual doses and shall be labeled in accordance with Federal and State regulations. Caps shall be child-proof in accordance with Federal regulations. The dose of methadone shall not exceed 120 mg. when administered in the methadone clinic nor 100 mg. for take-home medications. Any take-out medication shall be labeled with: the program's name, address and telephone number; and the client's identification number and/or name.

l) Detoxification time limitation

If methadone is administered for more than 21 days, the procedure is

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

considered to have progressed from detoxification or treatment of the acute withdrawal syndrome to maintenance treatment, even though the goal and intent may be eventual total withdrawal. The dosage schedules indicated below are recommended but could be varied depending upon clinical judgment. Initially, a single oral dose of 15-20 mgs. of methadone will often be sufficient to suppress withdrawal symptoms. Additional methadone may be provided if with drawal symptoms are not suppressed or whenever symptoms reappear. When clients are physically dependent on high doses of opiates, it may be necessary to exceed these levels. Forty milligrams per day in single or divided doses will usually constitute an adequate stabilizing dosage level. Stabilization can be continued two to three days, and then the amount of methadone will normally be gradually decreased. The rate at which methadone is decreased will be determined separately for each client. The dose of methadone can be decreased on a daily basis or in two-day intervals, but the amount of intake shall always be sufficient to keep withdrawal symptoms at a tolerable level. For hospitalized clients, a daily reduction rate of 20 percent of the total daily dose usually will be tolerated and will cause little discomfort. In ambulatory clients, a somewhat slower schedule may be needed.

m) Encouragement to attain drug-free status

- 1) All clients in treatment shall be given careful consideration for discontinuation of methadone use, especially after reaching a 10-20 mg. dosage level and social rehabilitation has been maintained for a reasonable period of time.
- 2) Clients shall be encouraged to pursue the goal of eventual withdrawal from methadone and becoming completely drug-free. Upon successfully reaching a drug-free state, clients shall be retained in the program for as long as necessary to assure stability in the drug-free state, with the frequency of their required visits adjusted at the discretion of a clinical staff.

n) Maintenance time limitation

- 1) Maintenance treatment using methadone shall be discontinued within two years after such treatment is begun unless, based upon medical judgment recorded in the clinical record for the client, the client's status indicates that such treatment should be continued for a longer period of time. Any client continued on methadone for longer than two years shall be subject to periodic reconsideration for discontinuance of such treatment. In addition, detoxification from methadone maintenance treatment shall be provided to all clients who request it.
- 2) For those few clients where it is determined by a review which includes medical, clinical, and administrative input that termination detoxification is strongly indicated for administrative reasons and on-site detoxification is undesirable (i.e., violent behavior), alternative arrangement for inpatient or outpatient detoxification may be made at another facility. If

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

such arrangements are impossible, the client's on-site detoxification will be initiated with primary consideration being given to a humane and clinically indicated regimen.

- o) Maintenance dosage determination
In maintenance treatment that initial dosage of methadone shall control the abstinence symptoms that follow withdrawal of opiate drugs but shall not be so great as to cause sedation, respiratory depression, or other effects of acute intoxication. It is important that the initial dosage be adjusted on an individual basis to the narcotic tolerance of the new client. If such a client has been a heavy user of opiates to the day of admission, the initial dosage may be 20 mg. four to eight hours apart or 40 mg. in a single oral dose. If the client enters treatment with little or no narcotic tolerance (e.g., if the client has recently been released from jail or other confinement), the initial dosage may be one-half of these quantities. When there is any doubt, the smaller dose should be used initially. The client should then be kept under observation; and, if symptoms of abstinence are distressing, additional 10 mg. doses may be administered as needed. Subsequently, the dosage should be adjusted individually, as tolerated and required, up to a level of 120 mg. daily.

p) Daily dosage determination

- 1) A regular review of dosage level shall be made by the responsible physician with careful consideration given for reduction of dosage, as indicated on an individual basis, with a goal of the client eventually attaining a drug-free status. The review shall consist of both medical and clinical evaluations and shall be accomplished every 90 days. Results of these reviews shall be entered into the client clinical record.
- 2) For daily dosages above 100 mg., clients shall ingest medication under observation seven days per week. A daily dose of 120 mg. or more shall be specifically justified in the medical record. For daily dosages above 120 mg., prior approval from Federal authority and the Department shall be obtained.

q) Frequency of client visits and take-home dosage limitations

- 1) Prior to reducing the frequency of visits, documentation of the client's progress and the need for reducing the frequency of visits shall be recorded. It is recognized that daily attendance may be incompatible with gainful employment, education and responsible homemaking. After demonstrating satisfactory adherence to the program regulations for at least three months and showing substantial progress in rehabilitation by participating actively in the program activities and/or by participation in educational, vocational or homemaking activities, those clients whose employment, education or homemaking responsibilities would be hindered by daily attendance may be permitted to reduce to three times weekly the times when they must ingest the drug under observation. These clients shall

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

receive no more than a two-day take-home supply.

- 2) With continuing adherence to the program's requirements and progressive rehabilitation for at least two years after entrance into the program, such clients may be permitted twice-weekly visits to the program for drug ingestion under observation with a three-day take-home supply.
- 3) The requirements and schedules for when the drug must be ingested under observation may be relaxed if the client has a serious physical disability which would prevent frequent visits to the facility. The Federal authority and Department shall be notified of such cases. Additional medication may also be provided in exceptional circumstances such as acute illness, family crises, or necessary travel when hardship would result from requiring the customarily observed medication intake for the specific period. In these circumstances of severe illness, infirmity or physical disability, an authorized individual (e.g., a licensed practitioner) may deliver or obtain the medication. Programs with clients who are planning extended travel to another area may contact Treatment Referral Information and Placement Services (TRIPS) regarding further arrangements which are necessary.
- r) Client basic treatment facility
 - 1) The client shall always report to the same treatment facility unless prior approval is obtained from the program sponsor for treatment at another program. Permission to report for treatment at the facility of another program shall be granted only in exceptional circumstances and shall be noted on the client's clinical record.
 - 2) For record-keeping purposes, if a client misses appointments for two weeks or more without notifying the program, the episode of care if considered terminated and so noted in the clinical record. This does not mean that the client cannot return for care. If the client does return for care and is accepted into the program, this is considered a readmission and so noted in the clinical record. This method of record-keeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of methadone (e.g., the client who has received no medication for several days or more and upon return receives the usual stabilization dose). The client need not have a physical and laboratory examination if the return is within 90 days; however, the client shall be seen by the program physician prior to receiving methadone.
- s) Urine specimen collection and analysis
 - 1) At least one urine specimen shall be acquired from each client in the methadone treatment program on a weekly basis, analyzed for morphine at least weekly, and analyzed for barbiturates, methadone, amphetamines, and other drugs if indicated, at least monthly. Specimens shall be acquired in accordance with a randomized schedule, prepared in advance. The specimen shall be

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

collected under the direct visual observation of a staff member. No other method shall be approved unless it can be demonstrated that such method effectively minimizes the possibility of falsification of the sample.

- 2) All urinalysis results shall be entered in chronological sequence in the medical or counseling sections of the client's record. Any changes made in laboratories used for urine testing shall have prior approval of the Federal authority and the Department.
- t) Clinical record criteria
 - 1) In addition to the data obtained at intake processing, an adequate clinical record shall be maintained for each client. The record shall contain a copy of the signed consent form(s), the treatment plan, the amount of methadone administered or dispensed, the results of each urinalysis, any significant physical or psychological disability, the type or rehabilitative and counseling efforts employed, an account of the client's progress, and other relevant aspects of the treatment program, including transfers to another program or terminations.
 - 2) The record shall also include:
 - A) Dated case entries of all contact with or concerning clients, including a record of each clinic visit in chronological order.
 - B) Date and results of case conference.
 - C) Quarterly progress reports, including narrative summary of the client's response to treatment during the reporting period, a medical evaluation, recommendations for future planning, and recommendations for changes in treatment, if indicated.
 - D) Notes on referrals to specialized ancillary services provided including follow-up.
 - E) Closing summary, including reason for termination and referral, if any. In the case of death, the cause of death shall be documented and reported to the Department and Federal authorities. The program shall transfer the complete client record prior to or with the client's transfer.
 - u) Minimal staffing requirements

Each clinic providing a program of methadone maintenance shall have the services of:

 - 1) Physician
 - A) There shall be the equivalent of one full-time physician (35 hours per week) on site for every 300 clients.
 - B) Qualifications for the position shall include Illinois State licensure, specific training or direct experience in the treatment of narcotic addicts with methadone, and a well-rounded familiarity with the accepted rehabilitative modalities and/or provision for in-service orientation and education. Exemptions to full-time physician coverage may

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

be approved.

- 2) Clinic Administrator/Case Supervisor
 - A) There shall be at least one full-time clinic administrator/case supervisor on site for each clinic population of 300 clinics or any portion thereof. Such a person shall have special training, direct and progressively responsible experience in the operation of a narcotic treatment program, or a master's degree in social work or in one of the medical sciences with direct experience in the operation of a narcotic treatment program.
 - B) The clinic administrator shall be responsible for the ongoing supervision of administrative functions and the training of all staff in administrative and record-keeping systems of the program. The case supervisor shall be responsible for the training and supervision of all counseling staff.
 - C) In large clinics with populations in the excess of 300 clients, the functions of the clinic administrator and supervisor shall be divided between two full-time staff members: an administrator (administrative experience) and a clinic supervisor, both of whom shall have specific training or direct experience in the operation of a narcotic treatment program.
 - D) In those clinics with less than 300 clients, the clinic administrator/case supervisor may assume all the above responsibilities.
- 3) Nurses--There shall be no less than the equivalent of two full-time registered or licensed practical nurses on site for up to 300 clients. For clinics with over 300 clients, there shall be the equivalent of one full-time nurse for each additional 100 clients or major fraction thereof.
- 4) Counselors--There shall be one full-time counselor for 50 clients. Clients shall be assigned to specific counselors. In all cases, counselors should have specialized drug abuse training or experience and should participate in a program of continuing in-service training. The counselor should have either a bachelor's degree or high school graduation or equivalency diploma and two year or more experience as a paraprofessional rehabilitation worker. While a 1-to-50 counselor/client ratio is minimal, 1-to-30 is recommended. It is recommended that at least one counseling staff member be knowledgeable in the area of vocational rehabilitation, while an additional supportive services specialist for every 150 clients is recommended.
- 5) Physician's Assistants--Individuals licensed under the Illinois Physician's Assistants Practice Act may be used to augment or supplement physician coverage in methadone programs within the limitation prescribed by appropriate State and Federal regulations.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- v) Medication records

Accurate records traceable to specific clients shall be maintained, showing dates, quantities, and batch or code marks of the drug dispensed. These records shall be retained as indicated in Subpart C.
- w) Establishment of medication units

After obtaining separate approval from Federal authority and the Department, a program sponsor may establish as part of the program a methadone treatment facility from which licensed private practitioners and community pharmacists are permitted to administer and dispense methadone. A methadone treatment medication unit shall be geographically dispersed from the primary facility and other medication units that have been established. The enrollment in a medication unit shall be of reasonable size in relation to the space available for treatment and the size of the staff at the facility and may not exceed 30 clients. These medication units may also collect urine for narcotic drugs testing.
- x) Medication unit procedures

The following procedures shall be observed for operating a methadone medication treatment unit:

 - 1) A client shall be stabilized at optimal dosage level before being referred to a medication unit. Since the medication unit will not provide a range of services, the program sponsor shall determine that the client to be referred is not in need of frequent counseling, rehabilitation nor other services which are only available at the primary program facility. A client shall not be referred to a medication unit before the client has demonstrated progress toward rehabilitation. The nature of this progress shall be entered in the client's record.
 - 2) After a client is referred to a medication unit, the program sponsor shall retain continuing responsibility for the client's care. The program sponsor shall assure that the client report weekly for urinalysis at either the primary facility or the medication unit and receive needed medical and social services at least monthly at the primary facility.
 - 3) Medication units shall be limited to the administering or dispensing of medication and the collection of urine for urine testing, following the procedures outlined in Section 2055.430 (s). If a private practitioner wishes to provide other services in addition to administering or dispensing medication and collecting urine samples, then the practitioner shall be considered a program and shall be required to submit an application for separate approval.
- y) Medical services

If a program is not physically located within a hospital which has agreed to provide any needed medical care for drug-related problems for the program's clients, there shall be a formal, documented agreement between the program sponsor and a responsible hospital official demonstrating that hospital care, both inpatient and

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

outpatient, is fully available to any client who may need it for such problems. Neither the program sponsor nor the hospital is required to assume financial responsibility for the client's medical care.

- z) Administration of methadone by a practitioner
- The administration and/or dispensing of methadone or any other controlled substance shall be performed by licensed practitioners or such other persons authorized by applicable State or Federal law. The licensed practitioner assumes responsibility for the amounts of methadone administered or dispensed, and all changes in dosage schedule will be recorded and signed by the licensed practitioner. No individual, practitioner, organization or legal entity may prescribe, administer or dispense methadone without prior approval by Federal authority and the Department.

- aa) Program sponsor not required to be a physician
- An individual listed as program sponsor for a treatment program using methadone need not personally be a licensed practitioner but shall employ a licensed physician for the position of medical director. Persons responsible for administering or dispensing the medication shall be practitioners as defined by Section 102(20) of the Controlled Substances Act (21 U.S.C. 802(20)) and licensed to practice by the State of Illinois.

- bb) Sponsor submission concerning programs

The program sponsor shall submit to the Federal authority and the Department a description of the organizational structure of the program applying for approval, listing the name of the person responsible for the particular program, the address, and the responsibilities for each facility or medication unit. The sources of funding for each program shall be listed, and the name and address of each governmental agency providing funding shall be stated.

- 1) Where two or more programs share a central administration (e.g., a city or state-wide organization), the person responsible for the organization (administrator) shall be listed as program sponsor for each separate participating program. An individual program shall indicate its participation in the central organization at the time of its application. The administrator is permitted to fulfill all record-keeping and reporting requirements for these programs, but it is emphasized that the programs will continue to receive separate approval.

- 2) One individual is permitted to assume primary medical responsibility for more than one program and to be listed as medical director. If an individual assumes medical responsibility for more than one program, the feasibility of such an arrangement shall be documented and attached to the application.

- cc) Applications and reports to be submitted
- Methadone program sponsors, administrators and staff should remain alert for changing Federal and State regulatory actions. Specific reporting requirements are enumerated in Section 2055.220 and

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Applications in Section 2055.120.

- dd) Use of methadone in the treatment of pentazocine addiction
- 1) The use of methadone in the treatment of pentazocine (Talwin) addiction is approved subject to the conditions set forth herein. Except as specifically provided by this Part, the use of methadone in the treatment of pentazocine-addicted persons shall be governed by all requirements imposed on the use of methadone in treatment pursuant to Illinois Department regulations (77 Ill. Adm. Code 1500).

- 2) A maximum daily dose of methadone shall not exceed 15 milligrams.
- A limited maintenance treatment regimen not to exceed six (6) months duration may be established for those persons meeting the standard admission criteria for maintenance treatment. Extensions of maintenance treatment duration for up to three (3) months may be granted by the Department upon written request of the program physician detailing the basis for the proposed extension. However, in no event shall a maintenance treatment authorized by this Part extend beyond 12 consecutive months. Pentazocine-addicted persons not qualifying for limited maintenance treatment may be considered for admission to a 21-day detoxification regimen in accordance with the provisions of Section 2055.430(e).

- 3) To insure against the administration of methadone to persons not truly dependent upon pentazocine, in lieu of a successful (withdrawal producing) naloxone challenge (Narcan), a documented diagnosis of actual physical and psychological dependency by two (2) independent physicians is required. Written treatment plans for persons on a limited maintenance or 21-day detoxification regimen shall be reviewed by the treatment team including mental health consultant every 30 days. Urinalysis testing for pentazocine shall be performed weekly.

- 4) Those programs accepting clients with a primary pentazocine problem for 21-day detoxification or limited maintenance are expected to develop and implement an intensive treatment procedure in their program recording these procedures in the program's Standard Operating Procedures manual.

Section 2055.440 Residential Treatment

Various techniques are utilized which attempt to redirect a client's life style by restructuring or redeveloping character. Residential treatment centers attempt to teach clients how to function effectively drug-free. To function effectively means that the clients demonstrate an accurate understanding of their own actions and the behavior of others around, an ability to initiate and conduct satisfactory interpersonal relationships, an ability to secure and maintain employment, an ability to remain uninvolved in criminal activity, and an ability to remain totally drug-free. To accomplish these goals, the program seeks to integrate a highly structured system of well-supervised work and group

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

activities, with an intense schedule of therapeutic techniques, in an atmosphere of support and direction brought about by the efforts of staff and clients. The length of stay in a residential facility may vary from three months to 18 months, with the average being approximately nine months.

- a) Residential treatment center

The residential treatment center shall consist of an environment designed to ensure maximal control of client activity, particularly during the early phases of treatment. The residential treatment center shall consist of an environment designed to ensure maximal control of client activity, particularly during the early phases of treatment.

- b) Counseling

Individual, family and group interaction shall be provided regularly to stimulate motivation and aid the client in establishing an acceptable pattern of living.

- c) Admission criteria

The residential treatment center shall establish criteria for client admission and exclusion specific to the center. The following criteria may be used:

- 1) The candidate for treatment should be capable of accepting therapeutic situations directed toward the end of increasing individual responsibility.
- 2) The candidate for treatment should not be experiencing physical or psychological reactions requiring immediate psychiatric or medical aid.

- d) Admissions of clients under 18 years of age
 - 1) The residential center may accept clients aged 12-17 in the following situation:

- A) Persons aged 12-17 may be admitted after the person is individually screened by clinical staff, and the clinical staff determines that it is appropriate for treatment to be provided in an adult-oriented (more than half of the client population is over age 17) setting. If the clinical staff determines that a person requires treatment by a staff member with experience in providing treatment to this age group, such treatment shall be provided.

- B) Persons aged 12-17 who have been individually screened by clinical staff to determine their appropriateness to receive treatment in an adult-oriented setting shall be housed in bedrooms separate from persons over age 17.

- C) The program may share the same physical plant as the adult residential program if the requirements of Section 2055.440(d)(1)(B) and (d)(2) are met.

- 2) All residential programs which admit clients under the age of 18 must provide 24 hour staff supervision which consists of, at a minimum, a staff member on-site, awake and on duty at all times.
- 3) The client's parent or legal guardian shall provide prior written consent to residential treatment. Programs shall obtain the

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

client's written consent prior to releasing information to, or communicating with the parent or legal guardian.

- e) Admissions to youth-oriented settings

Persons over age 18 may be admitted after the person is individually screened by clinical staff, and the clinical staff determines that it is appropriate for treatment to be provided in a youth-oriented (more than half the client population is under age 18) setting.

- f) Urine collection and analysis

Urine specimens from each client shall be collected under appropriate supervision, on a randomly scheduled basis, at least once a week. These samples shall be analyzed at least monthly for morphine, methadone, cocaine, codeine, amphetamines, barbiturates, and other substances if indicated.

- g) Supportive services

After a minimum of 60 treatment days, programs shall encourage clients to participate in supportive services which are available. Clients have the right not to become involved; however, they should be encouraged to do so as a basic element of treatment. Program staff, staff of other agencies, or volunteers may be utilized to provide seminars or courses on specific subjects or to work with selected individuals. While residents are in the early phase of treatment, such topics as money management, sex education, family planning, etc., are appropriate. As the resident progresses, educational and vocational exploration shall begin. The clinical indications for this shall be considered on an individual basis, granting human and program flexibility.

- h) Program assessment

The residential program shall provide within its structure the means for ongoing review of the degree to which clients are meeting their individual treatment goals. When it becomes evident to key staff that the client has received optimal benefit from residential treatment, the further progress requires a return to an outpatient program and to functioning in the community.

- i) Discharge planning for clients

Joint planning for the client's discharge shall be undertaken in consultation with the client. The client's meeting of criteria for termination shall be documented in the client's file.

- j) Discharge linkage

The residential program shall provide appropriate assistance, when feasible, to the client in such matters as job placement, outpatient treatment, living arrangements, and resumption of educational pursuits when termination is indicated. To the maximum extent possible, the program shall utilize community resources. Documentation to provide any of these services shall be subject to review by the Department.

- k) Methadone used in residential modalities

Methadone used in residential modalities in detoxification and/or maintenance treatment shall comply with Section 2055.430 herein.

- l) Applicability of regulations and guidelines

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

All regulations and guidelines specified in Section 2055.410 herein shall apply to all residential programs.

- m) Meals to be provided
- n) Residential programs shall provide a minimum of three meals per day per client. Transitional care programs shall at least one meal per day to each client in attendance.

Section 2055.450 Transitional Care

A transitional care program is a drug abuse program which provides therapy to persons with a history of drug abuse who have progressed in treatment and/or who have been assessed as ready to participate in an advanced program which emphasizes resocialization of the individual into the community.

a) Description of services

A transitional care drug abuse service is one which shall provide partial residential services to persons who exhibit problems in psychosocial adjustment which result from or may result in the abuse of controlled substances. The program provides specific services as described below, directly or through a supportive service system.

- 1) A transitional program shall engage in a regimen of personal counseling, structural activities, and information regarding alternatives to drug abuse with a specific population and, while attending to the participant's concerns about control of the drug habit, shall emphasize re-entry into the general society through vocational or educational channels.

Such program shall:

- A) Make available five (5) hours of structured programming per client per day.
- B) Offer on a regular schedule, individual and group activities to stimulate motivation, teach coping skills, and aid the client in establishing an acceptable pattern of living.
- C) Structure opportunities and provide experience to clients designed to assist them in identifying problems (which may include their drug use patterns), finding possible solutions, making decisions, and accepting personal and social responsibility.
- D) Provide and/or arrange employment or educational counseling and other vocationally oriented services.
- E) Develop employment and academic opportunities and improve employment skills.
- F) Provide limited family counseling to improve interaction and communication.
- 2) Supportive services shall utilize a system of supportive services for participants (e.g., the appropriate use of community resources and the participant's personal resources; i.e., family employers, schools, health and social service agencies, and other community institutions).

Based on client need, the program shall:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- A) Arrange for the dispensing of methadone with an outpatient drug abuse service apart from such transitional care program or provide for the dispensing of methadone if such transitional care program is duly authorized to operate as a methadone outpatient or residential clinic.
- B) Integrate its service with other community resources in the human services area and shall be responsive to community needs by:
 - i) Arranging necessary medical, dental, social, legal, or psychological services.
 - ii) Providing crisis intervention and referral, either in person or by telephone, to an individual who is in need of immediate assistance.
 - iii) Encouraging community understanding and support, improving community relations by increasing awareness of the drug abuse problem, and explaining opportunities for alternatives.
- C) Provide consultation to employers, school personnel, and other service providers involved in the person's rehabilitation process as necessary for treatment and with respect for the client's rights to confidentiality.

b) Hours of operation

- 1) The hours of operation shall be during periods which make the program's services reasonably available to clients. The program's hours of operation shall be displayed conspicuously and communicated to the general public as appropriate.
- 2) Staff shall be on site ten hours per day, six days a week. Staff shall be available by telephone during hours other than regular program hours.

c) Admission criteria

- 1) The transitional care center shall establish criteria for client admission specific to the center.
- 2) The following criteria may be used:
 - A) The candidate for treatment should be capable of accepting therapeutic situations directed toward the end of increasing individual responsibility.
 - B) The candidate for treatment should be:
 - i) Capable of employment or school participation, or
 - ii) Employed or in a vocational training program or in an academic program on at least a part-time basis, or
 - iii) On a leave of absence from employment or school.
 - C) The candidate for treatment should not be experiencing physical or psychological reactions requiring immediate psychiatric or medical aid.
- d) Denial of admission
 - Where admission is denied, the rationale for denial shall be documented. Information about alternate services shall be given, or, in cases requiring special consideration, an attempt shall be made and

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- c) Specificity of additional services
Where programs provide services which have not been delineated above, such services shall be specific to the population to be served and should enhance or augment a more traditional service program(s).
- d) Program services
An outpatient drug-free treatment program shall submit a schedule of service activities and program elements.
- e) Applicability of regulations and guidelines
All regulations and guidelines specified in Sections 2055.410 and 2055.420 herein shall apply to all outpatient drug-free treatment programs.

Section 2055.470 Central Intake

A central intake unit's mandate is to establish a uniform, standardized, medical and psychosocial evaluation of all applicants for treatment. This may be: providing multiphasic screening for disease with appropriate referral as necessary; consistent documentation of drug history and verification of records; professional observation of drug symptoms and application of clinical judgment; convenient central collection of laboratory specimens for testing; evaluation prior to treatment; and rational, objective and reviewable referral procedures.

- a) Facility maintenance
All facilities shall be maintained in a clean and safe condition and in accordance with appropriate local, State and Federal codes and other laws.
- b) Facility furnishing and equipment
Appropriate furnishing and equipment shall be provided.
- c) Availability of program description and referral options
The central or regional intake unit shall require that each participating program submit criteria to be used for admissions, terminations and description of services available.
- d) Services
A central intake unit shall make available: a uniform, standardized, initial client orientation; multiphasic health screening; and referral to an appropriate treatment modality for new and readmitted clients.
- e) Hours of operation
A central intake facility shall remain open no fewer than five days per week and no fewer than eight hours per day.
- f) Intake medical screen
A central intake unit shall perform or cause to be performed the following:
 - 1) At intake, initial personal psychological, medical and drug histories.
 - 2) At intake, a physical examination stressing: infectious diseases; pulmonary, hepatic or cardiac abnormalities; dermatologic sequelae of addiction; and possible concurrent surgical problems.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- e) Client capacity
A transitional care component shall estimate its approximate capacity in terms consistent with services to be offered, facility size, and staff or volunteer patterns. Such information shall be made available to the Department.
- f) Meals to be provided
Transitional care programs shall provide at least one meal per day per client.
- g) Program services
A transitional care program shall provide a comprehensive range of rehabilitative services on site under professional supervision to include private (individual, family and group) counseling and resocialization.

Section 2055.460 Outpatient Drug-Free Treatment

Recognizing that outpatient drug-free treatment programs may view themselves as community agencies which see their primary responsibilities as responding to the changing needs of their client population and providing either in-house or through a systems change component those high-quality, immediate-response services not otherwise available, these standards have been developed to be as flexible as possible. This Section is applicable only to drug abuse treatment programs which do not normally utilize prescription drugs in the treatment of their clients and therefore emphasize structured counseling and alternative activities.

- a) Description of services
An outpatient drug abuse treatment program is one which shall provide nonresidential services to persons who have psychosocial problems which have resulted from the abuse of controlled substances or from the abuse of legal substances and which advertises itself or in face is substantially engaged in the services described below. An outpatient drug-free treatment program or component shall be described as providing primarily counseling or alternatives to drug abuse to a specific group of people. Such programs may provide any or all the following activities in addition to the normal counseling regimen:
 - 1) Offer activities to help the client become more aware and learn self-appreciation and worth.
 - 2) Allow the individual to experience and accept responsibility through the development and refinement of personal interaction.
 - 3) Develop the individuals' ability to identify their problems and find possible solutions, as well as provide experience to enable the clients to make decisions.
 - 4) Provide family counseling or other alternative treatment methods to improve interaction and communication.
- b) Staffing
The equivalent of one or more full-time counseling staff shall be available for approximately 40 clients.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

3) At intake, a laboratory examination, including the nine items listed on the following page.

- A) Investigation of the possibility of: infectious disease; pulmonary, hepatic or cardiac abnormalities; dermatologic sequelae of addiction; and possible concurrent surgical problems.
- B) Complete blood count and differential
- C) Serological test for syphilis
- D) Routine and microscopic urinalysis
- E) Urine screening for drugs (toxicology)
- F) Multiphasic chemistry profile
- G) Chest X-ray or Mantoux skin test
- H) Australian antigen (HBsAg testing (HAA testing)) as appropriate
- I) EKG and biological tests for pregnancy, as appropriate

g) Physician services

A central intake unit shall have available the services of a medical director licensed in the State who shall ensure that the initial evaluation is appropriately performed and that medical needs of individual clients are properly assessed and treated/referred, as appropriate. Medical services shall include initial diagnostic workup, identification of medical and surgical problems for referral to other treatment facilities, and review of client records. The physician may request, with the client's approval, a copy of the client's previous medical records and forward them to the appropriate treatment center.

h) Hospital affiliation

A formal written agreement shall exist between the central intake unit and a licensed hospital(s) in the community for provision of emergency, inpatient and ambulatory hospital services as appropriate.

i)

Interview of each new admission or readmission shall be performed by a qualified intake counselor. The intake staff shall take a complete personal history: family, education, vocation, legal and related areas; and a drug history, including kinds of drug abused, when begun, and prior treatment attempts. The staff shall then present the various treatment modalities available for the client and sufficiently explain the specifics of treatment services available. After discussing these in light of the client's particular situation (including the results of the physician's evaluation), a treatment modality shall be selected by mutual agreement with the applicant and the appropriate referral made. Form FD-2635, "Consent to Methadone Treatment," shall be completed by all clients to be referred for methadone treatment.

j) Client record

A record of all individuals referred for treatment through its screening and referral unit shall be maintained.

k) Urine screen

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Urine testing, according to the following procedures, shall be completed. Urine specimens from each client shall be collected under appropriate supervision during the intake process. The specimens shall be analyzed for morphine, methadone, cocaine, codeine, amphetamines and barbiturates, as well as other drugs as indicated. Breath analysis is acceptable for alcohol testing.

- l) Laboratory proficiency compliance
- Laboratories or presumptive urine testing machines used for urine testing shall comply with the U.S. Department of Health, Education, and Welfare Center for Disease Control proficiency testing programs.
- m) Use of methadone in central intake units

If methadone is to be administered at the central intake unit for detoxification, the unit shall comply with the methadone regulations of the Federal authority and Section 2055.430 herein. The unit shall function in compliance with all other relevant Federal, State and local regulations and guidelines.

n) Client orientation and referral

Each central intake unit shall define: the procedures by which applicants shall be oriented to available treatment options; the decision-making process for determining recommended referral; the decision-making process for "mutual agreement" between applicants, programs and central intake unit staff regarding referral; and procedures for meeting the needs of clients referred to the central intake unit for re-entry. These shall be subject to review by the Department.

Section 2055.480 Research Involving Human Subjects

a) Research prescription

Any drug abuse-related research to be conducted within the State involving the use of human subjects in the conduct of biomedical or behavioral research shall make application to and receive a license from the Department prior to implementation of such a project. This regulation applies to all drug abuse-related research involving the use of human subjects, whether publicly or privately funded or publicly or privately conducted. The purpose of this regulation shall be to safeguard the rights and welfare of "subjects at risk" in the conduct of such research.

b) Specific research-related definitions

- 1) "Subject at Risk" means any individual who may be exposed to the possibility of injury, including physical, psychological or social injury, as a consequence of participation as a subject in any research, development or related activity which departs from the application of those established and accepted methods necessary to meet the subject's needs or which increases the ordinary risks of daily life, including the recognized risks inherent in a chosen occupation or field of service.

- 2) "Informed Consent" means the knowing consent of individuals or

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

their legally authorized representatives, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion. The basic elements of information necessary to such consent include:

- A) A fair explanation of the procedures to be followed and their purposes, including identification of any procedures which are experimental.
- B) A description of any attendant discomforts and risks reasonably to be expected.
- C) A description of any benefits reasonably to be expected.
- D) A disclosure of any appropriate alternative procedures that might be advantageous to the subject.
- E) An offer to answer any inquiries concerning the procedures.
- F) An instruction that subjects are free to withdraw their consent and to discontinue participation in the project or activity at any time without prejudice to the subjects.

c) Submission of research protocol

The Department review of such research protocol shall determine whether these subjects will be placed "at risk" or involved, and whether:

- 1) The risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant a decision to allow the subject to accept these risks.
- 2) The rights and welfare of any such subjects will be adequately protected.
- 3) A legally effective, informed consent will be obtained by adequate and appropriate methods in accordance with the provision of this Section.
- 4) The conduct of the activity shall be reviewed at timely intervals.

d) Institutional sponsorship or affiliation

No license involving human subjects-at-risk shall be issued to an individual unless that individual is affiliated with or sponsored by an institution which can and does assume responsibility for the subject involved.

e) Additional application information

The license application shall include the following data in addition to that required by Article II herein:

- 1) Identification of researchers and their qualifications
- 2) Affiliation with sponsoring organization
- 3) Funding source and approved or in-process grant application
- 4) Research design and protocol
- 5) Description of subject's risk
- 6) Documentation of informed consent form

f) Informed consent documentation

Informed consent of human subjects shall take one of the following

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

forms (assurances of this shall be provided in the license application):

- 1) Provision of a written-consent document embodying all the basic elements of informed consent. This may be read to the subject, or the subject's legally authorized representative shall be given adequate opportunity to read it. This document shall be signed by the subject or the subject's legally authorized representative. Sample copies of the consent forms approved by the sponsoring organization shall be retained in its records.
- 2) Provisions of a short-form, written-consent document indicating that the basic elements of informed consent have been presented orally to the subject or the subject's legally authorized representative. Written summaries of what shall be said to the subject are to be approved by the sponsoring organization. The short form shall be signed by the subject or the subject's legally authorized representative and by an auditor witness to the oral presentation and to the subject's signature. A copy of the approved summary, annotated to show any additions, shall be signed by the persons officially obtaining the consent and by the auditor witness. Samples copies of the consent form and of the summaries as approved by the sponsoring organization shall be retained in its files.

3)

- A) Modification of either of the primary procedures outlined in paragraphs A and B of this Part imposes additional responsibility upon the sponsoring organization to establish:

- i) That the risk to any subject is minimal.
- ii) That use of either of the primary procedures for obtaining informed consent would surely invalidate objectives of considerable, immediate importance.
- iii) That any reasonable, alternative means for attaining these objectives would be less advantageous to the subjects.

- B) The sponsoring organization's reasons for permitting the use of modified procedures shall be individually and specifically documented in the minutes and in reports of its actions to the files of the institution. All such modifications shall be regularly reconsidered as a function of continuing review and as required for annual review, with documentation of reaffirmation, revision or discontinuation as appropriate.

Section 2055.490 Use of Methadone in Hospitals

a) Form of administration

The drug may be administered or dispensed in either oral or parenteral form, for analgesia in cases of severe pain, for detoxification, and

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

for temporary maintenance treatment.

b) Use parameters

Methadone is permitted to be administered or dispensed only for detoxification or temporary treatment of hospitalized patients, and for analgesia in cases of severe pain for hospitalized clients and outpatient. If methadone is administered for treatment of heroin dependence for more than three weeks, the procedure passes from treatment of the acute withdrawal syndrome (detoxification) to maintenance treatment. Maintenance treatment is permitted to be undertaken only by approved methadone programs. This does not preclude the maintenance treatment of an addict who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of the addict's stay or whose enrollment in a program which has approval for maintenance treatment using methadone has been verified. Any hospital which already has received approval under this paragraph may be permitted to serve as a temporary methadone treatment program when an approved methadone treatment program has been terminated and there is no other facility immediately available in the area to provide methadone treatment for the clients.

c) Identification of individual to receive and store

The name of the individually licensed practitioner responsible for receiving and securing supplies of methadone shall be submitted to the Federal authority and the Department. Individuals not authorized by Federal or State law shall not receive supplies of methadone.

d) Advisement of anticipation of requirements

The anticipated quantity of methadone needed per year shall be submitted to the Federal authority and Department.

e) Maintenance records

This hospital shall maintain accurate records showing dates, quantities, and batch or code marks of the drug used for inpatient and outpatient treatment. The records shall be retained for a period of three years.

f) Application procedures

Application for a hospital pharmacy to provide methadone for analgesia, detoxification and temporary treatment shall be submitted to the Federal authority and the Department and shall receive approval from both, except as provided for in Section 2055.40 (b). Within 60 days after receipt of the application by the Department and the Federal authority, the applicant shall receive notification of approval, denial or a request for additional information when necessary.

g) Physician discretion

If, in a physician's professional judgment, methadone would be the drug of choice as an analgesic for treating a patient in severe pain, the drug shall be available for use on an outpatient basis from an approved hospital pharmacy or in a remote area from an approved community pharmacy. Prior to filling a physician's prescription for

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

methadone for outpatients, the pharmacy shall obtain from the physician a statement indicating that all such prescriptions written by that physician will be limited to use for analgesia in cases of severe pain. The physician shall agree to maintain records to substantiate such use. These records shall be available in the hospital or made available at the request of the hospital administrator. In remote areas, the approved community pharmacy shall be permitted to maintain these records, or they may be forwarded to the State authority. On January 30th of each year, the names and addresses of all physicians who prescribed methadone for analgesia on an outpatient basis during the previous year shall be reported to the Department and Federal authority.

h) Prescription parameters

Prescriptions for analgesia shall be filled only if they are written by a physician who has submitted the required statement to the approved hospital or community pharmacy.

i) Shipment to remote areas

In remote areas or in certain exceptional circumstances where there are no approved hospitals, community pharmacies shall be approved by the Department and the Federal authority to receive shipments of methadone for administering or dispensing for analgesia upon the recommendation of the Department and after consultation with the Federal authority.

j) Delivery to licensed practitioners

Delivery shall only be made to a licensed practitioner employed at the facility. At the time of delivery, the licensed practitioner shall sign for the methadone and place the practitioner's specific title and identification number on any invoice.

k) Prereceipt requirement

Before a hospital pharmacy may lawfully receive shipments of methadone for use as an analgesic for severe pain and for detoxification or temporary maintenance treatment, a responsible hospital official shall complete, sign and life in triplicate with the Federal authority and the Department Form FD-2626, "Hospital Request for Methadone for Analgesia in Severe Pain and for Detoxification and Temporary Maintenance Treatment," and shall receive a notice of approval thereof from the Federal authority and the Department.

Section 2055.495 Intervention Programs

a) Definition

An intervention program is one which provides non-residential services of a short term problem-solving nature; and/or evaluation referral services; and/or group or individually programmed activities; and/or street drug analysis information services. The above described services are provided to either high risk or actual dangerous drug users to reduce the likelihood of future involvement with dangerous drugs. Intervention programs include any program which advertises

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

itself or is substantially engaged in the the provision of services described in Section 2055.495.

b) Modality Applicability

1) The regulations and guidelines presented in this Section are general and apply to Early Intervention, Alternatives, and Drug Analysis programs.

2) The regulations and guidelines presented in Sections 2055.495(j) and (h) are modality specific and are in addition to the regulations and guidelines in this Section.

c) Application Requirements/Exceptions

All programs shall submit, as part of the license application, information required under Section 2055.120 with the exception of Section 2055.120(a)(1)(B)(vi), (vii), (viii), (ix), (xii); 2055.120(a)(2); and 2055.120(a)(4). In addition, all programs shall submit a complete description of service activities including the following:

- 1) Statement of Purposes and Goals
- 2) Basic Operational Methods and Procedures
- 3) Project Components
- 4) A Definition/Delineation of the Target Group(s)
- 5) Documentation of Existing Referral Relationships with Medical and Psycho/Social Service Providers

d) Capacity

Every program shall maintain a service capacity consistent with the types of services provided, facility size, and staffing patterns.

e) Service Availability

Program services shall not be misrepresented. The program shall provide all advertised services during advertised hours. Appropriate staff (including volunteers) shall be available either at a facility or on call during normal operating hours.

f) Program Records

A program shall maintain a record system adequate to document the delivery of the various services being provided. Where a program has identifiable participants, such records shall be individually oriented and shall specify services provided and individual responses. Where services are provided to participants not identified by name or groups of consumers, a logging system of services delivered shall be maintained.

g) Program Internal Assessment

A program shall develop and implement a modest plan for ongoing internal assessment of the effectiveness of its program. Such a plan shall include an adequate system of receiving participant and community response to services provided. Information received through this system shall be reviewed at least annually by the program's administrative staff and/or board of directors. The plan and results of the review shall be made available, upon request, to the Department.

h) Use of Volunteers

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Volunteers shall be screened for suitability and competency with respect to their prospective function and shall be provided with appropriate training and supervision. A recruitment, screening, and training plan shall be formulated and made available, upon request, to the Department.

i) Procedures Manual

A program shall develop a manual of its internal operating procedures. The procedures shall specify all administrative and clinical policies of the program and shall include by-laws and minutes of the corporation and any other rule or regulation or custom bearing on the program's operation. The manual shall be updated at least annually and the staff and board review of the update recorded.

j) Early Intervention

An Early Intervention program is one which provides drug abuse problem assessment, referral, and/or short-term counseling services to experimental drug users and episodic drug abusers to resolve personal and/or interpersonal problems in an effort to halt a progression to chronic drug abuse. These services may be provided at the facility site, in the community, or by telephone. Drug abuse early intervention components may be included in such services as crisis centers/hot lines, youth service bureaus, drop-in centers, school counseling programs, and outreach programs.

1) Resource Listing

An Early Intervention program shall maintain a current list of qualified referral resources.

2) Criteria for Program Participation and Exclusion

An Early Intervention program shall have written procedures that assure the prompt assessment of both the physiological and psychological status of the drug using individual so that the most appropriate intervention services may be provided. Further, the program shall have written criteria for program participation and exclusion. Such criteria shall be submitted to the Department in the license application.

3) Individual Intervention Plans

Individual Intervention plans shall be developed at the point a program participant in conjunction with the counselor identifies a specific drug use/abuse problem and requests on-going intervention services. These individual plans include:

- A) A review of the history and presenting problem
- B) A statement of intervention goals generated by both staff and client
- C) The assignment of a primary counselor
- D) A delineation of the type and frequency of services to be provided including counseling.
- E) Mental Health Consultation
- F) At least two hour per month of professional mental health consultation shall be provided. The purpose of this consultation is to provide assistance to staff in case management and

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

in-service training.

k) Street Drug Analysis

1) General

- A) Education and prevention measures require a measure of direct audience contact and acceptance to be most effective. A useful vehicle for establishing this desired contact is the street drug analysis program, wherein inquirers can obtain reliable information concerning those substances actually on the street and potential consequences of using any substance without benefit of licensed practitioner supervision. Such an analysis effort can provide for:

- i) The collection of valuable data concerning the extent and nature of the illicit drug market
- ii) The dissemination of the extent and nature of misrepresentation which may deter some persons from using and may reduce risks of use for those persons already using such substances.
- iii) The furnishing of laboratory reports to medical and health facilities to help prepare them to adequately diagnose and effectively treat toxic drug reactions
- iv) The first contact opportunity for many drug users/drug abusers with the drug abuse prevention and treatment network

- B) A favorable approach toward developing rapport between prevention counselors and subjects-at-risk, is one which enables the prevention worker to communicate in a truthful and nonjudgmental manner; face-to-face contact is an optimal mode. Since the majority of the subjects-at-risk are relatively inexperienced and/or unsophisticated in the consequences of using drugs, the prevention counselor can become a source of enlightenment while giving assurances of maintaining inquirer anonymity. It is paramount that analysis programs maintain their prevention/education orientation and not become subverted into providing quality control services for traffickers.

2) Eligibility to conduct street drug analysis

To be eligible to operate a street drug analysis program, the applicant must:

- A) Be licensed in at least one of the other primary drug treatment or early intervention modalities, and
- B) Select and designate a maximum of two drug receipt coordinators, and
- C) Give evidence of cooperative agreement with a DEA registered laboratory qualified to perform requisite analytical services, and
- D) Develop and submit protocol for the handling and transporting of controlled substances that is acceptable to local law enforcement authorities and the Department, and

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

- E) Give evidence of a cooperative agreement between the program, local law enforcement and prosecutorial authorities reflecting approval of the proposed street drug analysis operation.

3) Types of analysis

- A) Quantitative analysis may be conducted; however to prevent the possibility of dealers utilizing these labs as a quality control only qualitative results may be given to the donor.
- B) Analysis should be sufficient to determine if dangerous adulterants are in the sample or if the strength is so great that use would be harmful to the user. In these cases, the donor can only be told what the drug was and that use would be dangerous.
- C) Quantitative information may be released by the analytical laboratory to medical practitioners performing emergency services and to the Department for research purposes.

4) Recordkeeping and reporting

Each person engaged in the receipt and analysis of anonymous samples shall:

- A) Maintain records containing the following information: (to the extent known and reasonably ascertainable)
 - i) Lab identification number
 - ii) Date sample received
 - iii) Purported contents and actual identification
 - iv) Quantity received
 - v) Form of sample (i.e., powder, liquid, tablet, etc.)
 - vi) Description of sample
 - vii) Quantity utilized in analysis
 - viii) Street price if known
 - ix) Method sample received

- B) Report presence of dangerous adulterants or substances immediately to the Department and any emergency medical treatment facility with whom they have a cooperative service agreement.

- C) Report results of each month's testing endeavor to the Department not later than the 10th working day of the following month.

- D) Request analytical laboratories to furnish copies of their quarterly DEA reports to the Department.

- E) Provide adequate measures to ensure that only qualitative information is disseminated to donors and quantitative reports are only distributed to persons authorized within this Section.

5) Security

A) Physical

- i) All samples received must be treated and secured as for Schedule II substances, and maintained under a continuous receipt system approved by the Department.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

ii) Submitted samples must be transported to the analytical laboratory in an expeditious manner. Normally, this means that transportation should be accomplished on the date of receipt, or the next immediate laboratory working day.

iii) Programs must provide a safe or other suitable steel container to store drug samples while awaiting transport to the laboratory. The storage container must be of sufficient construction as to satisfactorily guard against theft of the contents or the container itself.

B) Personnel

Drug receipt coordinators shall furnish three copies of standard fingerprint identification cards to the Department to provide a positive identification means. The cards should be executed by the local law enforcement agency cooperating with the program in the analysis venture. An acceptable alternative to the submission of the fingerprint cards to the Department is written certification from the local law enforcement authority that the designees satisfy the registration criteria to distribute controlled substances under the Illinois Controlled Substances Act (Ill. Rev. Stat. 1981, ch. 56 1/2, pars. 1100 et seq.).

6) Transportation of samples

A) The transport of samples from the program to the analytical laboratory must be accomplished by the drug receipt coordinators within specific hours and over specific routes using specific vehicles as agreed upon by the local law enforcement authority, or

B) Via U.S. registered mail. Transportation to the post office shall be as outlined in paragraph (1) above.

C) Any unauthorized deviation from the transportation protocol may be grounds for administrative or criminal action on the part of appropriate authorities, including the Department.

7) Disposition of samples

A) All samples shall be delivered to the laboratory in their entirety as received by the program. Failure to deliver the entire sample as received may be grounds for administrative and/or criminal action. Destruction of samples or portions thereof by program personnel is prohibited.

B) Post analytical destruction of samples by the laboratory must be accomplished in accordance with current Federal and State regulations.

SUBPART F: HEARINGS

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

a) Authority of Department

The Department may deny, suspend or revoke any license or application for renewal thereof by a finding after the applicant or licensee has had an opportunity for a hearing.

b) Prior notice and charges

1) Before denial, suspension or revocation of a license, the Director shall send the applicant or licensee a notice of hearing by registered or certified mail, notifying the person of the Department's intention to deny, suspend or revoke a license and the reasons therefor. Such notice shall contain a proposed date for hearing, but in no event shall such date be later than 30 days after the date of notice.

2) A written statement of charges, allegations or reasons shall be included within or provided with the notice. The statement will set out specifically the purported violations, identifying the statute section, the rule, the standard and/or the regulation. Other factual data shall be stated where such are necessary for clarification to enable the applicant or licensee to be reasonably informed of the basis of the proposed denial, suspension or revocation.

c) Injunctive process

Notwithstanding any other rule or regulation, the Department may, without prior notification, apply to a circuit court to enjoin any act or practice on the part of an applicant or licensee which, in the opinion of the Department, constitutes or will constitute a violation of the Act and the rules prescribed thereunder.

d) Suspension prior to hearing

The Department may suspend a license of any person prior to a hearing where the Department determines there has been a violation of the Act or any rules or regulations promulgated thereunder where delay in action would result in serious harm to clients, staff members, or the public. Upon receipt of notice of such suspension, the licensee shall deliver his license(s) to the Department without delay. Formal hearings relative to the permanent revocation of the license(s) shall be conducted as soon as practicable after delivery of the license(s) to the Department, but the date for hearing shall not be set later than 30 days after such delivery.

e) Conduct of hearing

All hearings shall be conducted by the Department or by a hearing officer of the Department. Hearings shall be conducted at the office of the Department or, in its sole discretion, at some other location for the convenience of the parties.

f) Mailings

All notices, correspondence and pleadings shall be sent by registered or certified mail or delivered in person supported by proper affidavit to the address of the Department and to the address(es) provided under Section 2055.120, or to the address of the attorney at law for the licensee or applicant whose appearance is on file with the Department.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

- g) Early termination
At any time after the date of the notice of hearing but before the final order of the Department or the hearing officer, the proceedings, with the consent of all the parties thereto, may be terminated. The proceedings may be terminated only after the Department or the hearing officer is satisfied that the applicant or licensee shall comply with the provisions of the Act and the rules and regulations promulgated thereunder. A written stipulation signed by the parties memorializing the applicant's or licensee's intentions, efforts and corrective actions performed or to be performed shall be included in the record of such proceedings.

- h) Parties and representation
1) The parties in the proceedings shall be the Department or its representative, the applicant or licensee, and any intervenor whose petition for leave to intervene has been granted. Any employee of the applicant or licensee may be determined to be a party.

- 2) A natural person may appear and be heard in his own behalf. A corporation, association or partnership may appear and present evidence only through an attorney at law authorized to practice in the State of Illinois. Any party may appear and be heard by an attorney at law authorized to practice in the State of Illinois. Only persons admitted to practice as attorneys and counselors at law shall represent another before the Department or hearing officer in any matter involving legal skills and knowledge. Every person appearing at the proceedings shall conform his conduct to the standards in the courts of Illinois. If any person fails to conform to these standards, the Department or hearing officer may refuse to permit such person to appear in any proceedings.

- 3) The Department or the hearing officer may permit other persons to be heard. Such persons shall not be parties to the proceedings unless so designated by the Department or the hearing officer.

i) Intervenor

- 1) The Department or a hearing officer may grant a person leave to intervene in the proceedings upon approval of a petition. Every petition for leave to intervene shall contain:

- A) The name of the petitioner.
- B) A plain and concise statement of the petitioner's interest.
- C) A prayer for leave to intervene and to be treated as a party to the proceedings.
- D) If affirmative relief is sought, prayers for such relief, which may be in the alternative.

- 2) Petitions to intervene shall be presented prior to the hearing of evidence in sufficient time to allow other parties to object. Intervention after evidence has been heard and/or admitted shall not be permitted except for good cause shown. Permission to intervene shall not constitute a recognition by the Department or

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER

the hearing officer that such party might be affected by any order or rule entered in the proceedings.

- j) Diligent prosecution
All charges, allegations and claims of violations as the bases for denial, revocation or suspension of a license shall be prosecuted diligently or shall be dismissed. Failure to appear at a scheduled hearing, where the parties have been informed beforehand in sufficient time without previously notifying the Department or the hearing officer and the parties of record, shall be grounds for dismissal of the charges and allegations or the entry of a default order.

Section 2055.520 Conduct of Formal Hearings

a) Standards of hearings

It shall be the duty of the Department or the hearing officer to conduct a fair and impartial hearing, to obtain for consideration all pertinent facts, to avoid unwarranted delay at any stage of the hearing conducive to the ends of justice, and to adjudicate all issues in the hearing.

b) Duties

The Department or hearing officer shall have authority to do any or all of the following to assure the equitable conduct of a hearing:

- 1) Administer oaths and affirmations.
- 2) Issue any subpoena or subpoenas duces tecum to compel the attendance and testimony of witnesses and the production of books and records.
- 3) Rule upon petitions with respect to subpoenas and subpoenas duces tecum.
- 4) Rule upon all pleadings, motions and petitions, whether procedural or substantive in nature.
- 5) Take or cause to be taken depositions, as provided in civil actions in the circuit court, whenever the Department, hearing officer, or party cannot procure the attendance of a witness to give testimony or to produce books and records.
- 6) Regulate the hearing and, where appropriate or necessary, exclude any person or persons, including counsel, whose conduct is contemptuous or disruptive.
- 7) Strike any of all testimony of a witness who refuses to answer any proper question.
- 8) Hold conferences for the purpose of clarifying, settling or simplifying the issues.
- 9) Dismiss the charges or allegations or any portion thereof.
- 10) Order hearings reopened.
- 11) Order hearings consolidated.
- 12) Call and examine witnesses.
- 13) Request the parties at any time during the hearing to state their respective positions concerning any issue and to present reasons in support of such position.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

14) Adjourn the hearing as the needs of justice and good administration may require.

c) Form of pleading or motion

1) There are no specific requirements as to form of pleadings or motions. Pleadings are required to contain a caption sufficient to identify the parties and a clear and plain statement of the issues contested, the relief sought, and the grounds therefor. A docket number will be assigned to the hearing by the Department or the hearing officer.

2) Pleadings shall be signed by the parties filing them or by their representatives, and such signature constitutes a representation by the signer that the signer has read the document and that to the best of the signer's knowledge, information and belief, the statements made therein are true and the pleadings are not made for the purpose of delay.

3) All pleadings, motions or other documents after the notice of hearing shall be filed in duplicate with the Department, together with the pleader's certification of service by registered or certified mail or personnel service upon all other parties to the proceedings.

d) Client confidentiality
During every stage of proceedings, records or the identity, diagnosis, prognosis or treatment of any client which are maintained in connection with the performance of any drug abuse function authorized or assisted under any provision of the The Act shall be confidential. Where the Department or the hearing officer determines that client records or data contained in the client records must be disclosed to ensure the just outcome of the hearing, disclosure is permitted after the purposes and uses have been established in the proceedings record. Such records and data shall not contain any reference to the identity of a particular client except by client number.

e) Evidence and witnesses

1) The Department or hearing officer shall not be bound by the formal rules of evidence. The parties shall be given adequate opportunity to present evidence and oral and written arguments on any issue of fact or law. All evidence having probative value, relevant and material to facts and issues, will be admitted, subject only to objections as to the weight thereof. Immaterial, irrelevant and merely cumulative evidence shall be excluded.

2) Any party may conduct direct examination or cross-examinations for the purpose of full and fair disclosure of the matters in issue. Any party may submit evidence in rebuttal and surrebuttal.

3) If the Department or the hearing officer determines that a witness is either hostile or unwilling, the Department or hearing officer may authorize the party calling such witness to treat the witness as if under cross-examination.

4) Any party may call any adverse party as a witness without

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

vouching for the witness's credibility and may examine the witness as if such adverse party were under cross-examination. Any party calling a witness, upon a showing that the party was called in good faith and the party is surprised by the witness's testimony, may impeach the witness by evidence of prior inconsistent statements.

5) A deposition may be used in lieu of other evidence when taken in compliance with Illinois Supreme Court Rules governing evidence depositions.

6) Notwithstanding anything herein to the contrary, the rules of privilege recognized by law shall be given effect with regard to any evidence offered or attempted to be offered in discovery or at the hearing.

f) Subpoenas

1) Subpoenas for the attendance of witnesses from anyplace or for the production of books, records or documents at a hearing will be issued by the Department or the hearing officer upon the Department's or the hearing officer's own motion, or upon application in writing by a party based on a showing that a subpoena is reasonably required.

2) Applications for subpoenas to compel the production of books, records and/or documents shall specify as clearly as possible the books, records and/or documents to be produced and the material and relevant facts to be proved thereby.

3) A subpoena issued may be served by any person of legal age. A subpoena issued shall be served in the same manner as a subpoena issued out of a court.

g) Witness fees

1) Witnesses subpoenaed before the Department or hearing officer shall be paid the same fees and mileage as are paid in State court proceedings, either when the witness is excused from further attendance or when the subpoena is actually served. Where the subpoena is issued at the instance of a party other than the Department, the witness fee and mileage charges are to be borne by such other party.

2) Witnesses whose depositions are taken and the persons whose attendance is required shall be entitled to the same fees paid for such services in the State courts. All expenses in connection with the taking of a deposition, including court reporter fees, shall be borne by the party at whose instance the deposition was taken.

h) Transcript of hearing

An official court reporter shall be engaged to make and transcribe a stenographic record of the hearings. The Department will provide for such copies of the transcript as it may require for its purposes. No copies of the transcript will be provided to parties by the Department, but copies may be obtained from the official reporter upon payment of the appropriate costs.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

i) Record of hearing

The record of any formal hearing shall include:

- 1) The notice of hearing and the charges and allegations of violation of the The Act and the rules promulgated thereunder.
- 2) The pleadings, motions, briefs and arguments, affidavits, exhibits, documents and records, and the transcript of the proceedings containing the evidence, conclusions of law and face, and the determination and recommendations of the Department or the hearing officer.

- 3) The final orders or decisions made by the hearing officer or Department.

j) Hearing officer

All hearings shall be held before the Department or a hearing officer appointed by the Department. If a party to the hearing shall believe the hearing officer selected to conduct such hearing is biased against said party or the party's attorney, then the party shall make a request in writing to the Director at least 14 days prior to the date set for hearing to substitute another hearing officer. The request shall be accompanied by an affidavit setting out specific facts upon which the claim of prejudice is based and shall be signed by the party or officer or attorney therefor. Upon receipt of the request, the Director shall determine whether sufficient evidence is present to show prejudice on the part of the hearing officer. The Director shall appoint a substitute hearing officer if the Director finds that prejudice exists sufficiently to prevent a fair deposition.

k) Final decisions and orders

- 1) A final decision or order denying, suspending or revoking a license or application shall be made in writing and entered in the record within a reasonable period after the hearing. Such decisions and/or orders shall include findings of fact and conclusions of law stated separately.
- 2) Findings of fact shall be based on the evidence presented at the hearing and on matters officially noticed. Findings of fact shall include a concise and explicit statement of the underlying facts of record supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party and as supported by and in accordance with the competent material and substantial evidence. The decision and/or order shall be final and shall state the date on which it shall take effect.
- 3) A copy of the decision and/or order shall be delivered personally or by certified or registered mail forthwith to each party or to the party's attorney of record.

l) Rehearing

- 1) Within 20 days after the receipt of notice of the final decision and/or order, any party may present a motion to the Department for a rehearing. Such motion shall set out in particular which rulings, orders and findings are objectionable and the grounds

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

therefor. Notice of such motion shall be served on the Executive Director by registered or certified mail at the address of the Department.

- 2) Failure to make any objection to rulings, decisions or findings during the hearing shall not operate as a waiver of any objection thereto.
- 3) No exceptions need be taken to any ruling or action of the Department or hearing officer.
- 4) Within 30 days after the Department receives the motion for rehearing or on or before the next regulatory scheduled Department meeting, whichever is later, the Department will take appropriate action on such motion. If the Department sustains such motion, the Department shall modify, vacate or mitigate such final decision and/or order in accordance with conclusions and recommendations made by the Department or its designee at such rehearing directed by the Department.

- 5) Notice of rehearing shall be served in the same manner as provided for an original hearing. Evidence shall be received in the record for the Department's reconsideration and judicial review. At the time the Department sustains any motion for rehearing, the Department may designate one or more of its members or refer the proceedings back to the original hearing officer or to another hearing officer to reconsider any final decision or order the subject of a rehearing. The Department designees shall consider the reasons stated by the parties seeking rehearing and shall make appropriate conclusions and recommendations to the Department as a whole. If a rehearing is sought upon the ground of introducing new or further evidence, the nature and purpose of the evidence to be introduced shall be briefly stated and supported by an affidavit showing why such evidence was not available at the time of the hearings. Upon completion of the review conducted by designees of the Department, the record of such reconsideration shall be submitted to the Department at its next regularly scheduled meeting for action. The Department shall give great weight to any and all recommendations made by the designee appointed to conduct the subject rehearing.

- 6) In lieu of appointing a designee of the Department to conduct a rehearing, the Department may meet as a whole to reconsider any decision or order sought to be vacated, modified or mitigated by parties seeking rehearings. Any such reconsideration will be subject to notice provisions as if it were an original hearing.

m) Renewal pending outcome

Any licensee against whom suspension or revocation proceedings are pending at the time the licensee(s) would ordinarily expire, except as provided under Section 2055.520 (d), upon reapplication shall be issued an interim license until final disposition of the hearing procedure.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

n) Review
Judicial review of a final decision and/or order shall be as provided in the Administrative Review Law (Ill. Rev. Stat. 1981, ch. 110, pars. 3-101 et seq.); and all amendments and modifications thereto and the rules adopted pursuant thereto are hereby adopted.

o) Certification of a record for review
The Department shall not be required to certify any record to the court, file any answer in court, or otherwise appear in any court proceedings, under the Administrative Review Law (Ill. Rev. Stat. 1981, ch. 110, pars. 3-101 et seq.), unless there is filed in the court with the complaint a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record. Exhibits shall be certified without cost. Failure on the part of the plaintiff to file such receipt in court shall be grounds for dismissal of the action.

p) Continuances and extensions of time
Continuances and extensions of time may be granted or denied by the Department or hearing officer for good cause shown.

q) Ex parte communication

There should be no ex parte communication with respect to the merits of any case not concluded between any Department employee, officer or agent of the Department, hearing officer, or any of the parties or intervenors. In the event such ex parte communication occurs, the Department or the hearing officer may make such orders or take such action as fairness requires, including such disciplinary action as is appropriate under the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

r) Computation of time

1) In computing any period of time prescribed or allowed in this Part, the day from which the designated period begins to run shall not be included. In the absence of specific reference to calendar days, the last day of the period so computed shall be extended, if necessary, to a day which is not a Saturday, Sunday or State holiday.

2) Where service of any document by certified or registered mail is specified or allowed by any provision of law or by this Part to which a response is required, four days as computed according to the previous paragraph shall be added to the time specified for such response.

Section 2055.530 Informal Hearings

a) Informal hearings

1) After a notice of hearing as provided in Subpart F, Section 2055.520(b), the applicant or licensee may request an informal hearing by writing to the Director. Either the Director or a hearing officer appointed by the Director will convene a meeting

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

at a place designated by the Executive Director or hearing officer at a time reasonable to all parties.

2) The purpose of an informal hearing is to formulate specific issues and, if possible, to reach a compromise settlement agreeable to the parties based on their good will.

3) If no settlement is agreed upon, the matter shall proceed as soon as possible to a formal hearing. A request for informal hearing shall not constitute a waiver of the receipt of any party to a formal hearing.

b) Record of informal hearing

1) No official court stenographer is required to be present at an informal hearing. Any party may request that an official reporter be present to record and transcribe the proceedings; such charges shall be borne by the party so requesting. Copies of the transcript may be obtained by any party upon payment of the appropriate fees.

2) In the event that an official court reporter is not engaged to record the proceedings, a written memorandum signed by the parties shall be created to memorialize the agreements, understandings and conclusions reached by the parties.

3) An unofficial record of the informal hearing may be made upon the approval of the Executive Director or the hearing officer by mechanical, electrical, electronic or visual recording device. Such unofficial record shall be used only for clarification and summarization of agreements, understandings and conclusions to be transcribed into a permanent written memorandum.

SUBPART G: SANCTIONS

Section 2055.710 General

a) Sanctions prescribed

Failure to abide by the requirements described herein may result in any or all of the following:

- 1) Revocation of license
- 2) Seizure of drug supply
- 3) Injunction
- 4) Administrative, civil or criminal proceedings

b) Preliminary review

Before any violation of Sections 7.1(e) or 28(a) of the Act is reported by the Department or any of its agents to any State's Attorney for the institution of criminal proceedings, the person against whom such proceedings are contemplated shall be given appropriate notice and an opportunity to present the person's views before the Department or its designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceedings.

c) Department discretion

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Nothing in the Act or in any other Act shall be construed as requiring the Commission to report minor violations of the Act for the institution of proceedings under the Act when the Department believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

d) Fines

The failure to comply with or the violation of any provision of the Act or any rule, regulation or standard adopted by the Department thereunder, by any person, is a petty offense punishable by a fine not to exceed \$500 for each offense. Each subsequent offense, after conviction of a first offense, shall be a Class A misdemeanor, punishable by a term of imprisonment not to exceed one (1) year or a fine not to exceed \$1,000 or both. Each day's violation shall constitute a separate offense. All fines collected under the Act shall be paid into the State Treasury and placed in the general revenue fund.

Section 2055.720 Administrative Actions

a) Letters of warning

1) The Department, its agents, or employees may issue a letter(s) of warning to notify the licensee's alleged violation(s) of the Act. Such letter(s) may be sent in accordance with Section 2055.510(f).

2) The recipient of any letter(s) may respond either by:

A) A written letter of the recipient's efforts, actions and attempts to correct or amend the alleged violation(s); or protesting the allegations and seeking a hearing. A licensee's offer to correct, amend or repair the alleged violation(s) does not constitute an agreement by the licensee as to the validity of the allegations nor a waiver of the right to a formal hearing.

B) A ten-day letter of warning may be issued when the alleged violation(s) is of such a nature that immediate attention must be given to respond to the allegations for fear of some harm to the public or that continued violation(s) would prevent performance by the licensee of a fundamental of a program.

C) A 30-day letter of warning may be issued when the alleged violation(s) is of such a nature that reasonable attention must be given to respond to the allegations and continued violation(s) would result in performance by the licensee deficient from acceptable standards.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

Section 2055.APPENDIX A List of Federal Forms to be Submitted for Methadone Use

The following shall be submitted to the Department and Federal authority in methadone use application:

- A. Form FD-2632, "Application for Approval of Use of Methadone in a Treatment Program"
This form shall be completed and signed by the program sponsor and submitted in triplicate to the Federal authority and the Department.
- B. Form FD-2633, "Medical Responsibility Statement for Use of Methadone in a Treatment Program"
This form shall be completed and signed by each licensed physician authorized to administer or dispense methadone and submitted in triplicate to the Federal authority and Department. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed, even if they are not at present responsible for administering or dispensing the drug. It shall be submitted in triplicate to Federal authority and the Department on or before January 30 of each year.
- C. Form FD-2634, "Annual Report for Treatment Program Using Methadone"
This form shall be completed and signed by the program sponsor for every program over which he has responsibility for each calendar year of operation. It shall be submitted in triplicate to the Federal authority and the Department on or before January 30 of each year.
- D. Form FD-2635, "Consent to Methadone Treatment"
This form shall be completed and signed by the applicant or, if the applicant is under 18 years of age, by the parent or legal guardian.
- E. Form DEA-363, "Application for Registration under Narcotic Addict Treatment Act of 1974"
This triplicate form shall be completed and signed by the medical director or researcher.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER
Section 2055.APPENDIX C Physical/Laboratory Examination Matrix

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED REPEALER
Section 2055.APPENDIX B Notice of Inspection

Pursuant to Chapter 111 1/2, paragraph 6328(c) and paragraph 6329 of the The Act, Illinois Revised Statutes, notice of inspection is hereby given to:

.....(Name of Individual)..... (Date).....
.....Firm Name.....
.....Address.....City, State and ZIP Code..
.....Served on.....Title.....
Investigator
Compliance Officer
Staff Representative

ACKNOWLEDGEMENT

I,....., have been advised by Department Investigator/Compliance Officer/Staff Representative, who has presented appropriate credentials and this Notice of Inspection as required by paragraph 6328 (c) in part and paragraph 6329 of the The Act (Illinois Revised Statutes 111 1/2) authorizing the inspection of the above-described premises. I hereby acknowledge receipt of this Notice of Inspection. In addition, I hereby certify that I am thefor the premises described in this Notice of Inspection, that I have read the foregoing and understand its contents, and that I have authority to act in this matter and have signed this Notice of Inspection as consent to such inspection pursuant to my authority.

Witnesses:

.....Signature.....Date.....
.....Signature.....Date.....

KEY:

- L1 Mandatory laboratory testing (Tuberculin skin test may be used in lieu of a chest X-ray. However, if the tuberculin skin test is positive, then chest X-ray is required.)
- L2 Laboratory testing at discretion of physician (Tuberculin skin test may be used in lieu of a chest X-ray. However, if the tuberculin skin test is positive, then a chest X-ray is required.)
- P1 Mandatory Physical.

Opiates Parenteral	L1 P1	Outpatient
Oral	L1 P1	
Amphetamines Parenteral	L1 P1	
Oral	L1 P1	
Sedative/Hypnotics Parenteral	L1 P1	
Oral	L1 P1	
Inhalents	L1 P1	
Marihuana	L2** P1	
Cocaine Parenteral	L1 P1	
Nasal	L2** P1	
Hallucinogens	L2** P1	

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

P2 Physical at discretion of physician.

* A medical history is required in all cases (applicable to every cell of the matrix).

** As this is residential setting, the following laboratory tests are required: tuberculin skin test, hematocrit, and serological test for syphilis.

For methadone maintenance programs, laboratory testing is mandatory (L1).

NOTE:

L1 Supplants L1 in the following instances...

1. Outpatient heroin detoxification.

2. Readmission (within six months) of client who had previous laboratory examinations.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Temporary Assistance for Needy Families

2) Code Citation: 89 Ill. Adm. Code 112

3) Section Numbers: 112.305
Proposed Action: Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) A Complete Description of the Subjects and Issues involved: These proposed amendments make changes in the provisions regarding strikers. This rulemaking clarifies striker provisions by deleting the exemption for a person not directly involved in a strike and the exemption related to work requirements because these exemptions do not relate to the working population at large. This rulemaking also establishes that a family with a parent on strike, or a caretaker relative who is not a parent on strike, or a child on strike will be ineligible unless the family was receiving TANF or was eligible to receive TANF on the day before the strike began.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
112.68	Amendment	22 Ill. Reg. 6024
112.78	Amendment	22 Ill. Reg. 4354
112.78	Emergency	22 Ill. Reg. 4466
112.79	Amendment	22 Ill. Reg. 6024

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the Illinois Register. All requests and comments should be submitted in writing to:

Ms. Susan Warner Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor, Harris Bldg.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

Springfield, Illinois 62762
217/785-9772
TTY: 217/557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

- 12) Initial Regulatory Flexibility Analysis: The Department has determined that this rulemaking will not affect small businesses.

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary form compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998 at 22 Ill. Reg. 3147

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 112
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

SUBPART A: GENERAL PROVISIONS

Section
112.1 Description of the Assistance Program
112.5 Incorporation by Reference

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section
112.8 Caretaker Relative
112.9 Client Cooperation
112.10 Citizenship
112.20 Residence
112.30 Age
112.40 Relationship
112.50 Living Arrangement
112.52 Social Security Numbers
112.54 Assignment of Medical Support Rights
112.60 Basis of Eligibility
112.61 Death of a Parent (Repealed)
112.62 Incapacity of a Parent (Repealed)
112.63 Continued Absence of a Parent (Repealed)
112.64 Unemployment of the Parent (Repealed)
112.65 Responsibility and Services Plan
112.66 Alcohol and Substance Abuse Treatment
112.67 Restriction in Payment to Households Headed by a Minor Parent
112.68 School Attendance Initiative
112.69 Felons and Violators of Parole or Probation

SUBPART C: TANF EMPLOYMENT AND WORK ACTIVITY REQUIREMENTS

Section
112.70 Employment and Work Activity Requirements
112.71 Individuals Exempt from TANF Employment and Work Activity Requirements
112.72 Participation/Cooperation Requirements
112.73 Adolescent Parent Program (Repealed)
112.74 Responsibility and Services Plan
112.75 Teen Parent Personal Responsibility Plan (Repealed)
112.76 TANF Orientation
112.77 Reconciliation and Fair Hearings

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TANF Employment and Work Activities

112.78 Sanctions
 112.79 Good Cause for Failure to Comply with TANF Participation Requirements
 112.80 Responsible Relative Eligibility for JOBS (Repealed)
 112.81 Supportive Services
 112.82 Teen Parent Services
 112.83 Work Experience Evaluation Project (Repealed)
 112.84 Four Year College/Vocational Training Demonstration Project
 112.85 (Repealed)

SUBPART E: PROJECT ADVANCE

Section
 112.86 Project Advance (Repealed)
 112.87 Project Advance Experimental and Control Groups (Repealed)
 112.88 Project Advance Participation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)
 112.89 Project Advance Cooperation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)
 112.90 Project Advance Sanctions (Repealed)
 112.91 Good Cause for Failure to Comply with Project Advance (Repealed)
 112.93 Individuals Exempt From Project Advance (Repealed)
 112.95 Project Advance Supportive Services (Repealed)

SUBPART F: EXCHANGE PROGRAM

Section
 112.98 Exchange Program (Repealed)

SUBPART G: FINANCIAL FACTORS OF ELIGIBILITY

Section
 112.100 Unearned Income
 112.101 Unearned Income of Stepparent or Parent
 112.105 Budgeting Unearned Income
 112.106 Application And/Or Date Of Decision
 112.107 Initial Receipt of Unearned Income
 112.108 Termination of Unearned Income
 112.110 Exempt Unearned Income
 112.115 Education Benefits
 112.120 Incentive Allowances
 112.125 Unearned Income In-Kind
 112.126 Earmarked Income
 112.127 Lump-Sum Payments
 112.128 Protected Income (Repealed)
 112.130 Earned Income
 112.131 Earned Income Tax Credit

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

112.132 Budgeting Earned Income
 112.133 Budgeting Earned Income of Employed Applicants
 112.134 Initial Employment
 112.135 Budgeting Earned Income For Contractual Employees
 112.136 Budgeting Earned Income For Non-Contractual School Employees
 112.137 Termination of Employment
 112.138 Transitional Payments (Repealed)
 112.140 Exempt Earned Income
 112.141 Earned Income Exemption
 112.142 Exclusion From Earned Income Exemption
 112.143 Recognized Employment Expenses
 112.144 Income from Work-Study and Training Programs
 112.145 Earned Income From Self-Employment
 112.146 Earned Income From Roomer and Boarder
 112.147 Income From Rental Property
 112.148 Payments from the Illinois Department of Children and Family Services
 112.149 Earned Income In-Kind
 112.150 Assets
 112.151 Exempt Assets
 112.152 Asset Disregards
 112.153 Deferral of Consideration of Assets
 112.154 Property Transfers (Repealed)
 112.155 Income Limit

SUBPART H: PAYMENT AMOUNTS

Section
 112.250 Grant Levels
 112.251 Payment Levels
 112.252 Payment Levels in Group I Counties
 112.253 Payment Levels in Group II Counties
 112.254 Payment Levels in Group III Counties
 112.255 Limitation on Amount of TANF Assistance to Recipients from Other States

SUBPART I: OTHER PROVISIONS

Section
 112.300 Persons Who May Be Included in the Assistance Unit
 112.301 Presumptive Eligibility
 112.302 Reporting Requirements for Clients with Earnings
 112.303 Retrospective Budgeting
 112.304 Budgeting Schedule
 112.305 Strikers
 112.306 Foster Care Program
 112.307 Responsibility of Sponsors of Non-Citizens Entering the County Prior to 8/22/96
 112.308 Responsibility of Sponsors of Non-Citizens Entering the Country on or

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED AMENDMENTS

- be) An employee affected by a lockout is not a striker.
d) A family with a parent on strike, a caretaker relative on strike, or a child on strike shall be ineligible except for the following situations:
1) the striking person was exempt from work requirements on the day before the strike began (see Section 112.71 to determine if the person was exempt); or
2) if the striking person was not exempt from work requirements, the family must have been either receiving TANF or eligible to receive TANF on the day before the strike began.
c) A family with a parent on strike, or a caretaker relative on strike who is not a parent, or a child on strike shall be ineligible unless the family was receiving TANF or was eligible to receive TANF on the day before the strike began.
d) Eligibility and level of benefits for a striker's family are determined using the family's income and assets as they were on the day before the strike began. If eligible on the day before the strike, eligibility and level of benefits are determined by using the greater of the striker's pre-strike income or current income plus the non-striking household member's current income.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PROPOSED AMENDMENTS

Reg. 998, effective October 17, 1994; amended at 19 Ill. Reg. 2845, effective February 24, 1995; amended at 19 Ill. Reg. 5609, effective March 31, 1995; amended at 19 Ill. Reg. 7883, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 10206, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 12011, effective August 7, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 12664, effective September 1, 1995; emergency amendment at 19 Ill. Reg. 15244, effective November 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15661, effective November 3, 1995; emergency amendment at 19 Ill. Reg. 15839, effective November 15, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 16295, effective December 1, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 845, effective January 1, 1996; amended at 20 Ill. Reg. 3538, effective February 15, 1996; amended at 20 Ill. Reg. 5648, effective March 30, 1996; amended at 20 Ill. Reg. 6018, effective April 12, 1996; amended at 20 Ill. Reg. 6498, effective April 29, 1996; amended at 20 Ill. Reg. 7892, effective June 1, 1996; emergency amendment at 20 Ill. Reg. 12499, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14820, effective November 1, 1996; amended at 20 Ill. Reg. 15983, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 662, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 940, effective January 7, 1997; amended at 21 Ill. Reg. 1366, effective January 15, 1997; amended at 21 Ill. Reg. 2655, effective February 7, 1997; amended at 21 Ill. Reg. 7391, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 8426, effective July 1, 1997, for a maximum of 150 days; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 21 Ill. Reg. 15597, effective November 26, 1997; emergency amendment at 22 Ill. Reg. 4466, effective February 24, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. _____, effective _____.

SUBPART I: OTHER PROVISIONS
Section 112.305 Strikers

- a) Definition
1) A striker is anyone directly involved in:
A) a strike;
B) a work stoppage planned by employees, including a work stoppage because a contract expired;
C) a slowdown planned by employees;
D) other interruption of operations planned by employees.
2) A person who is a sympathy striker is considered to be a striker.
3) An individual who has been or is on strike at any time during a fiscal month is considered a striker for the fiscal month.
b) A person not directly involved in a strike who cannot work due to the strike or who is afraid to cross the picket line because of threats of injury or vandalism is not a striker (for example, a member of a non-striking union or a non-union member who cannot work due to a strike is not a striker). However, a sympathy striker is a striker.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

7 Ill. Reg. 5195; amended at 7 Ill. Reg. 11284, effective August 26, 1983; amended at 7 Ill. Reg. 13920, effective October 7, 1983; amended at 7 Ill. Reg. 15690, effective November 9, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16105; amended at 7 Ill. Reg. 17344, effective December 21, 1983; amended at 8 Ill. Reg. 213, effective December 27, 1983; emergency amendment at 8 Ill. Reg. 569, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4176, effective March 19, 1984; amended at 8 Ill. Reg. 5207, effective April 9, 1984; amended at 8 Ill. Reg. 7226, effective May 16, 1984; amended at 8 Ill. Reg. 11391, effective June 27, 1984; amended at 8 Ill. Reg. 12333, effective June 29, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17894; peremptory amendment at 8 Ill. Reg. 18127, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 19889, effective October 1, 1984; amended at 8 Ill. Reg. 19983, effective October 3, 1984; emergency amendment at 8 Ill. Reg. 21666, effective October 19, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21621, effective October 23, 1984; amended at 8 Ill. Reg. 25023, effective December 19, 1984; amended at 9 Ill. Reg. 282, effective January 1, 1985; amended at 9 Ill. Reg. 4062, effective March 15, 1985; amended at 9 Ill. Reg. 8155, effective May 17, 1985; emergency amendment at 9 Ill. Reg. 10094, effective June 19, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11317, effective July 5, 1985; amended at 9 Ill. Reg. 12795, effective August 9, 1985; amended at 9 Ill. Reg. 15887, effective October 4, 1985; amended at 9 Ill. Reg. 16277, effective October 11, 1985; amended at 9 Ill. Reg. 17827, effective November 18, 1985; emergency amendment at 10 Ill. Reg. 354, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 1172, effective January 10, 1986; amended at 10 Ill. Reg. 3641, effective January 30, 1986; amended at 10 Ill. Reg. 4885, effective March 7, 1986; amended at 10 Ill. Reg. 8118, effective May 1, 1986; amended at 10 Ill. Reg. 10628, effective June 1, 1986; amended at 10 Ill. Reg. 11017, effective June 6, 1986; Sections 112.78 through 112.86 and 112.88 recodified to 89 Ill. Adm. Code 160 at 10 Ill. Reg. 11928; emergency amendment at 10 Ill. Reg. 12107, effective July 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 12650, effective July 14, 1986; amended at 10 Ill. Reg. 14681, effective August 29, 1986; amended at 10 Ill. Reg. 15101, effective September 5, 1986; amended at 10 Ill. Reg. 15621, effective September 19, 1986; amended at 10 Ill. Reg. 21860, effective December 12, 1986; amended at 11 Ill. Reg. 2280, effective January 16, 1987; amended at 11 Ill. Reg. 3140, effective January 30, 1987; amended at 11 Ill. Reg. 4682, effective March 6, 1987; amended at 11 Ill. Reg. 5223, effective March 11, 1987; amended at 11 Ill. Reg. 6228, effective March 20, 1987; amended at 11 Ill. Reg. 9927, effective May 15, 1987; amended at 11 Ill. Reg. 12003, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 12432, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12908, effective July 30, 1987; emergency amendment at 11 Ill. Reg. 12935, effective August 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13625, effective August 1, 1987; amended at 11 Ill. Reg. 14755, effective August 26, 1987; amended at 11 Ill. Reg. 18679, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 18781, effective November 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20114, effective December 4, 1987;

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

Sections 112.90 and 112.95 recodified to Sections 112.52 and 112.54 at 11 Ill. Reg. 20610; amended at 11 Ill. Reg. 20889, effective December 14, 1987; amended at 12 Ill. Reg. 844, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1929, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 2126, effective January 12, 1988; SUBPARTS C, D and E recodified to SUBPARTS G, H and I at 12 Ill. Reg. 2136; amended at 12 Ill. Reg. 3487, effective January 22, 1988; amended at 12 Ill. Reg. 6159, effective March 18, 1988; amended at 12 Ill. Reg. 6694, effective March 22, 1988; amended at 12 Ill. Reg. 7336, effective May 1, 1988; amended at 12 Ill. Reg. 7673, effective April 20, 1988; amended at 12 Ill. Reg. 9032, effective May 20, 1988; amended at 12 Ill. Reg. 10481, effective June 13, 1988; amended at 12 Ill. Reg. 14172, effective August 30, 1988; amended at 12 Ill. Reg. 14669, effective September 16, 1988; amended at 13 Ill. Reg. 70, effective January 1, 1989; amended at 13 Ill. Reg. 6017, effective April 14, 1989; amended at 13 Ill. Reg. 8567, effective May 22, 1989; amended at 13 Ill. Reg. 16006, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16142, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 705, effective January 1, 1990; amended at 14 Ill. Reg. 3575, effective February 13, 1990; amended at 14 Ill. Reg. 14140, effective August 17, 1990; amended at 14 Ill. Reg. 6306, effective April 16, 1990; amended at 14 Ill. Reg. 10379, effective June 20, 1990; amended at 14 Ill. Reg. 13652, effective August 10, 1990; amended at 14 Ill. Reg. 14140, effective August 17, 1990; amended at 14 Ill. Reg. 16937, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 338, effective January 1, 1991, for a maximum of 150 days; emergency amendment at 15 Ill. Reg. 2862, effective February 4, 1991, for a maximum of 150 days; emergency expired July 4, 1991; amended at 15 Ill. Reg. 5275, effective April 1, 1991; amended at 15 Ill. Reg. 5684, effective April 10, 1991; amended at 15 Ill. Reg. 11127, effective July 19, 1991; amended at 15 Ill. Reg. 11447, effective July 25, 1991; amended at 15 Ill. Reg. 14227, effective September 30, 1991; amended at 15 Ill. Reg. 17308, effective November 18, 1991; amended at 16 Ill. Reg. 9972, effective June 15, 1992; amended at 16 Ill. Reg. 11550, effective July 15, 1992; emergency amendment at 16 Ill. Reg. 11652, effective July 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 13629, effective September 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 17724, effective November 9, 1992; amended at 16 Ill. Reg. 20147, effective December 14, 1992; amended at 17 Ill. Reg. 357, effective December 24, 1992; amended at 17 Ill. Reg. 813, effective January 15, 1993; amended at 17 Ill. Reg. 2253, effective February 15, 1993; amended at 17 Ill. Reg. 4312, effective March 25, 1993; emergency amendment at 17 Ill. Reg. 6325, effective April 9, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 6792, effective April 21, 1993; amended at 17 Ill. Reg. 15017, effective September 3, 1993; amended at 17 Ill. Reg. 19156, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 19696, effective November 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 5909, effective March 31, 1994; amended at 18 Ill. Reg. 6994, effective April 27, 1994; amended at 18 Ill. Reg. 8703, effective June 1, 1994; amended at 18 Ill. Reg. 10774, effective June 27, 1994; amended at 18 Ill. Reg. 12805, effective August 5, 1994; amended at 18 Ill. Reg. 15774, effective October 17, 1994; expeditious correction at 19 Ill.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

Reg. 998, effective October 17, 1994; amended at 19 Ill. Reg. 2845, effective February 24, 1995; amended at 19 Ill. Reg. 5609, effective March 31, 1995; amended at 19 Ill. Reg. 7883, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 10206, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 12011, effective August 7, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 12664, effective September 1, 1995; emergency amendment at 19 Ill. Reg. 15244, effective November 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15661, effective November 3, 1995; emergency amendment at 19 Ill. Reg. 15839, effective November 15, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 16295, effective December 1, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 845, effective January 1, 1996; amended at 20 Ill. Reg. 3538, effective February 15, 1996; amended at 20 Ill. Reg. 5648, effective March 30, 1996; amended at 20 Ill. Reg. 6018, effective April 12, 1996; amended at 20 Ill. Reg. 6498, effective April 29, 1996; amended at 20 Ill. Reg. 7892, effective June 1, 1996; emergency amendment at 20 Ill. Reg. 12499, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14820, effective November 1, 1996; amendment at 20 Ill. Reg. 15983, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 662, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 940, effective January 7, 1997; amended at 21 Ill. Reg. 1366, effective January 15, 1997; amended at 21 Ill. Reg. 2655, effective February 7, 1997; amended at 21 Ill. Reg. 7391, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 8426, effective July 1, 1997, for a maximum of 150 days; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 21 Ill. Reg. 15597, effective November 26, 1997; emergency amendment at 22 Ill. Reg. 4466, effective February 24, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. _____, effective _____.

SUBPART I: OTHER PROVISIONS

Section 112.305 Strikers

a) Definition

1) A striker is anyone directly involved in:

- A) a strike;
- B) a work stoppage planned by employees, including a work stoppage because a contract expired;
- C) a slowdown planned by employees;
- D) other interruption of operations planned by employees.

2) A person who is a sympathy striker is considered to be a striker.

3) An individual who has been or is on strike at any time during a fiscal month is considered a striker for the fiscal month.

b) A person not directly involved in a strike who cannot work due to the strike or who is afraid to cross the picket line because of threats of injury or vandalism is not a striker. (for example, a member of a non-striking union or a non-union member who cannot work due to a strike is not a striker). However, a sympathy striker is a striker.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

- b) An employee affected by a lockout is not a striker.
- d) A family with a parent on strike--a caretaker relative on strike--or a child on strike--shall be ineligible--except--for--the--following situations:
- 1) the striking person was exempt from work requirements on the day before the strike began (see Section 112.71 to determine if the person was exempt); or
 - 2) if the striking person was not exempt from work requirements, the family must have been either receiving TANF or eligible to receive TANF on the day before the strike began.
- c) A family with a parent on strike, or a caretaker relative on strike who is not a parent, or a child on strike shall be ineligible unless the family was receiving TANF or was eligible to receive TANF on the day before the strike began.
- d) Eligibility and level of benefits for a striker's family are determined using the family's income and assets as they were on the day before the strike began. If eligible on the day before the strike, eligibility and level of benefits are determined by using the greater of the striker's pre-strike income or current income plus the non-striking household member's current income.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Riverboat Gambling2) Code Citation: 86 Ill. Adm. Code 30003) Section Numbers:

3000.100
3000.220
3000.222
3000.223
3000.224
3000.225
3000.236
3000.241

Proposed Action:

Amend
Amend
New
New
New
New
Amend
Amend

4) Statutory Authority: Riverboat Gambling Act [230 ILCS 10]

5) A Complete Description of the Subjects and Issues Involved: The proposed rulemaking changes the definition for "Key Persons" who must be approved by the Gaming Board to be involved in riverboat gambling. The new rules focus regulatory attention on those individuals or entities able to exercise substantial control or ownership of an owner or supplier licensed, or applying for a license, in Illinois. Currently more than 250 individuals and business entities are included in the Key Person definition, many of whom do not exercise ownership or control over a licensee or exert influence on the conduct of riverboat gambling in Illinois. The rulemaking will reduce the overall number of Key Persons. It also codifies in rule existing practices, procedures and requirements of the Gaming Board. The rulemaking maintains and clarifies the Board's ability to obtain disclosure from persons other than Key Persons, strengthens the Board's enforcement requirements in those instances when Key Persons and shareholders are required to be disassociated from a licensee, and clarifies that a Key Person may be subject to a fine as a disciplinary measure.

6) Will this rulemaking replace any emergency rulemaking currently in effect?
No7) Does this rulemaking contain an automatic repeal date? No8) Does this rulemaking contain incorporations by reference? No9) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
3000.100	Amend	22 Ill. Reg. 7097; April 24, 1998
3000.105	New	22 Ill. Reg. 7097; April 24, 1998
3000.200	Amend	22 Ill. Reg. 7097; April 24, 1998
3000.210	Amend	22 Ill. Reg. 7097; April 24, 1998
3000.245	Amend	22 Ill. Reg. 7097; April 24, 1998

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

3000.660
3000.800
3000.1071

Amend
Amend
Amend

22 Ill. Reg. 7097; April 24, 1998
22 Ill. Reg. 7097; April 24, 1998
22 Ill. Reg. 93; January 2, 1998

10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any person may submit comments in writing concerning this proposed rulemaking by no later than 45 days after publication of this notice in the *Illinois Register* to:

Mareile B. Cusack
Chief Counsel
Illinois Gaming Board
160 N. LaSalle, Suite 300S
Chicago, Illinois 60601
312/814-4700
FAX 312/814-8798

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendment begins on the next page:

ILLINOIS GAMING BOARD

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE

CHAPTER IV: ILLINOIS GAMING BOARD

PART 3000

RIVERBOAT GAMBLING

SUBPART A: GENERAL PROVISIONS

Section	Definitions
3000.100	Invalidity
3000.101	Public Inquiries
3000.102	Organization of the Illinois Gaming Board
3000.103	Rulemaking Procedures
3000.104	Disciplinary Actions
3000.110	Records Retention
3000.115	Place to Submit Materials
3000.120	No Opinion or Approval of the Board
3000.130	Duty to Disclose Changes in Information
3000.140	Applicant/Licensee Disclosure of Agents
3000.141	Owner's and Supplier's Duty to Investigate
3000.150	Investigatory Proceedings
3000.155	Duty to Report Misconduct
3000.160	Communication with Other Agencies
3000.161	Participation in Games by Owners, Directors, Officers, Key Persons or Gaming Employees
3000.165	Fair Market Value of Contracts
3000.170	Weapons on Riverboat
3000.180	

SUBPART B: LICENSES

Section	Classification of Licenses
3000.200	Fees and Bonds
3000.210	Applications
3000.220	Other Required Forms
3000.221	Identification and Requirements of Key Persons
3000.222	Disclosure of Ownership and Control
3000.223	Economic Disassociation
3000.224	Business Entity and Personal Disclosure Filings
3000.225	Owner's Licenses
3000.230	Distributions
3000.231	Acquisition of Ownership Interest By Institutional Investors
3000.234	Transferability
3000.235	Owner's License Renewal
3000.236	Supplier's Licenses
3000.240	Renewal of Supplier's License
3000.241	Amendment to Supplier's Product List
3000.242	

SUBPART C: OWNER'S INTERNAL CONTROL SYSTEM

Section	General Requirements - Internal Control System
3000.300	Approval of Internal Control System
3000.310	Minimum Standards for Internal Control Systems
3000.320	Review of Procedures (Repealed)
3000.330	Operating Procedures (Repealed)
3000.340	Modifications (Repealed)
3000.350	

SUBPART D: HEARINGS ON NOTICE OF DENIAL, RESTRICTION OF LICENSE OR PLACEMENT ON EXCLUSION LIST

Section	Coverage of Subpart
3000.400	Requests for Hearings
3000.405	Appearances
3000.410	Discovery
3000.415	Motions for Summary Judgment
3000.420	Subpoena of Witnesses
3000.424	Proceedings
3000.425	Evidence
3000.430	Prohibition on Ex Parte Communication
3000.431	Sanctions and Penalties
3000.435	Transmittal of Record and Recommendation to the Board
3000.440	Status of Applicant for Licensure or Transfer Upon Filing Request for Hearing
3000.445	

SUBPART E: EXCURSIONS

Section	Time of Excursion
3000.500	Excursions During Canceled or Disrupted Cruises; Violations and Fines
3000.510	

SUBPART F: CONDUCT OF GAMING

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

Section
 3000.600 Wagering Only with Approved Chips, Tokens and Electronic Cards
 3000.602 Disposition of Unauthorized Winnings
 3000.605 Authorized Games
 3000.606 Gaming Positions
 3000.610 Publication of Rules and Payout Ratio for Live Gaming Devices
 3000.614 Tournaments, Enhanced Payouts and Give-aways
 3000.615 Payout Percentage for Electronic Gaming Devices
 3000.616 Cashing-In
 3000.620 Submission of Chips for Review and Approval
 3000.625 Chip Specifications
 3000.630 Primary, Secondary and Reserve Sets of Gaming Chips
 3000.635 Issuance and Use of Tokens for Gaming
 3000.636 Distribution of Coupons for Complimentary Chips and Tokens
 3000.640 Exchange of Chips and Tokens
 3000.645 Receipt of Gaming Chips or Tokens from Manufacturer or Distributor
 3000.650 Inventory of Chips
 3000.655 Destruction of Chips and Tokens
 3000.660 Minimum Standards for Electronic Gaming Devices
 3000.665 Integrity of Electronic Gaming Devices
 3000.666 Bill Validator Requirements
 3000.670 Computer Monitoring Requirements of Electronic Gaming Devices

SUBPART G: EXCLUSION OF PERSONS

Section
 3000.700 Duty to Exclude
 3000.710 Distribution and Availability of Exclusion Lists
 3000.720 Criteria for Exclusion or Ejection and Placement on an Exclusion List
 3000.725 Duty of Licensees
 3000.730 Procedure for Entry of Names
 3000.740 Petition for Removal from Exclusion List

SUBPART H: SURVEILLANCE AND SECURITY

Section
 3000.800 Required Surveillance Equipment
 3000.810 Riverboat and Board Surveillance Room Requirements
 3000.820 Segregated Telephone Communication
 3000.830 Surveillance Logs
 3000.840 Storage and Retrieval
 3000.850 Dock Site Board Facility
 3000.860 Maintenance and Testing

SUBPART I: LIQUOR LICENSES

Section

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

3000.900 Liquor Control Commission
 3000.910 Liquor Licenses
 3000.920 Disciplinary Action
 3000.930 Hours of Sale

SUBPART J: OWNERSHIP AND ACCOUNTING RECORDS AND PROCEDURES

Section
 3000.1000 Ownership Records
 3000.1010 Accounting Records
 3000.1020 Standard Financial and Statistical Records
 3000.1030 Annual and Special Audits and Other Reporting Requirements
 3000.1040 Accounting Controls Within the Cashier's Cage
 3000.1050 Procedures for Exchange of Checks Submitted by Gaming Patrons and Granting Credit
 3000.1060 Handling of Cash at Gaming Tables
 3000.1070 Tips or Gratuities
 3000.1071 Deposits of Admission Tax and Wagering Tax
 3000.1072 Cash Reserve Requirements

SUBPART K: SEIZURE AND DISCIPLINARY HEARINGS

Section
 3000.1100 Coverage of Subpart
 3000.1105 Duty to Maintain Suitability
 3000.1110 Board Action Against License or Licensee
 3000.1115 Complaint
 3000.1120 Appearances
 3000.1125 Answer
 3000.1126 Appointment of Hearing Officer
 3000.1130 Discovery
 3000.1135 Motions for Summary Disposition
 3000.1139 Subpoena of Witnesses
 3000.1140 Proceedings
 3000.1145 Evidence
 3000.1146 Prohibition of Ex Parte Communication
 3000.1150 Sanctions and Penalties
 3000.1155 Transmittal of Record and Recommendation to the Board

AUTHORITY: Implementing and authorized by the Riverboat Gambling Act [230 ILCS 10].

SOURCE: Emergency rule adopted at 15 Ill. Reg. 11252, effective August 5, 1991, for a maximum of 150 days; adopted at 15 Ill. Reg. 18263, effective December 10, 1991; amended at 16 Ill. Reg. 13310, effective August 17, 1992; amended at 17 Ill. Reg. 11510, effective July 9, 1993; amended at 20 Ill. Reg. 5814, effective April 9, 1996; amended at 20 Ill. Reg. 6280, effective April 22, 1996; emergency amendment at 20 Ill. Reg. 8051, effective June 3, 1996, for

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

a maximum of 150 days; amended at 20 Ill. Reg. 14765, effective October 31, 1996; amended at 21 Ill. Reg. 4642, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 14566, effective October 22, 1997, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 978, effective December 29, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4390, effective February 20, 1998; amended at 22 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 3000.100 Definitions

For purposes of this Part these--Rules the following terms shall have the following meanings:

"Act": The Riverboat Gambling Act. [230 ILCS 10]

"Affiliate": An "Affiliate of", or person "Affiliated with", a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

"Alcoholic Liquors": Includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being.

"Attributed Interest": A direct or indirect interest in a Business Entity deemed to be held by a person not through the person's actual holdings but either through the holdings of the person's relatives or through a third party or parties on behalf of the person pursuant to a plan, arrangement or agreement.

"Bill Validator": Any electro-mechanical device attached either on or into an Electronic Gaming Device which accepts and analyzes the legitimacy of United States currency, validates the currency, stores the currency, and issues Electronic Credits equal to the value of currency inserted into the device.

"Board": The Illinois Gaming Board.

"Business Entity": A partnership, incorporated or unincorporated association or group, firm, corporation, limited liability company, partnership for shares, trust, sole proprietorship or other business enterprise.

"Chip": A non-metal or partly metal representative of value, redeemable for cash, and issued and sold by a holder of an Owner's license license for use in Gaming other than in Electronic Gaming

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

Devices on such holder's Riverboat or Riverboats.

"Chip Float": The difference between the total face value of Chips received from vendors and the total face value of Chips accounted for through an inventory conducted by the Riverboat Gaming Operation.

"Dependent": Any individual who received over half of his support in a calendar year from any other individual.

"Electronic Card": A card purchased from a holder of an Owner's license for use on that holder's Riverboat Gaming Operation as a substitute for Tokens in the conduct of gaming on an Electronic Gaming Device.

"Electronic Credit": A value owed to a patron on an Electronic Gaming Device.

"Electronic Gaming Device": Includes as approved Games under Section 3000.605 Single-Position Reel-Type, Single-Position Single-Game Video and Single-Position Multi-Game Video Electronic Gaming Devices.

"Electronic Gaming Device Drop": The total face value of Tokens or representations of Tokens (including without limitation foreign Tokens and slugs) collected from the drop bucket and United States currency collected from the Bill Validator drop box.

"Electronic Gaming Device Win": The Electronic Gaming Device Drop minus hand-paid jackpots minus hopper fills.

"EPROM": An acronym for Erasable, Programmable, Read Only Memory, which is a microprocessor component that stores memory and affects payout percentage and/or contains a random number generator that selects the outcome of a Game on an Electronic Gaming Device.

"Excluded Person": Any person whose name appears on any Exclusion List, or any person whose name does not appear on an Exclusion List but who is excluded or ejected pursuant to Section 5(c)(12) of the Act or as a result of meeting one or more of the criteria in Section 3000.720 of this Part these--rules.

"Exclusion List": A list or lists which contain the identities of persons who are to be excluded or ejected from any licensed Gaming operation in any jurisdiction. The list may include any person whose reputation or conduct is such that his presence within a Riverboat Gaming Operation may, in the opinion of the Board or the Administrator, call into question the honesty or integrity of the Gaming operation or pose a threat to the interests of the State of Illinois.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

"Game": A gambling activity which is played for money, property, or anything of value, including without limitation those played with cards, Chips, Tokens, dice, implements, or electronic, electrical, or mechanical devices or machines.

"Gaming": The dealing, operating, carrying on, conducting, maintaining or exposing for play of any Game.

"Gaming Equipment/Supplies": A machine, mechanism, device, or implement which is integral to the operation of a Game or affects the result of a Game by determining win or loss, including without limitation: electronic, electrical, or mechanical devices or machines; cards or dice; layouts for Live Gaming Devices; any representative of value used with any Game, including without limitation Chips, Tokens, or Electronic Cards; and hardware and software related to any item described herein.

"Gaming Operations Manager": A person or business entity other than the holder of an Owner's license who has the ultimate responsibility to manage, direct or administer the conducting of Gaming.

"Hand": Either one Game in a series, one deal in a card Game, or the cards held by a player.

"Indirect Interest": An interest in a Business Entity that is deemed to be held by the holder of an Owner's license not through the holder's actual holdings in the business entity but through the holder's holdings in other business entities.

"Institutional Investor": A "qualified institutional buyer" as defined by Securities and Exchange Commission Rule 144A (17 CFR 230.144A) under the Securities Act of 1933, as amended.

"Internal Control System": Proprietary internal procedures and administration and accounting controls designed by the holder of an Owner's license for the purpose of exercising control over the Riverboat Gaming Operation.

"Junketeer": A person or entity that is compensated, by a Riverboat Gaming Operation, depending on how much a patron whose participation in gaming is facilitated by that person or entity actually wagers or loses while participating in gaming covered by a contract or agreement between the person or entity and the Riverboat Gaming Operation.

"Key Person": A Person identified by the Board under Section 3000.222 as subject to regulatory approval as a Person able to control, or exercise significant influence over, the management, assets, or operating policies of an owner or supplier licensee. For a

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

publicly held Business Entity subject to the Act; "Key Person" shall mean an officer, director, trustee, partner, managing agent, holder of any direct, indirect or beneficial ownership interest of 5% or more of a licensee or other entity subject to the Act, and any person identified by the Board as a person able to control or exercise significant influence over the management or operating policies of a licensee or other entity subject to the Act.

For other than a publicly held Business Entity subject to the Act, "Key Person" shall mean an officer, director, trustee, partner, managing agent, holder of any direct, indirect or beneficial ownership interest of a licensee or other entity subject to the Act; and any person identified by the Board as a person able to control or exercise significant influence over the management or operating policies of a licensee or other entity subject to the Act.

"Live Gaming Device": Any apparatus, other than an Electronic Gaming Device, upon which Gaming is conducted or which determines an outcome which is the object of a wager. This definition includes but is not limited to roulette wheels, keno machines, punchboard tickets and tables with layouts utilized in Games approved by the Board.

"Marketing Agent": A person or entity, other than a junketeer or an employee of a Riverboat Gaming Operation, who is compensated by the Riverboat Gaming Operation in excess of \$100 per patron per trip for identifying and recruiting patrons.

"Non-Value Chip": A Chip, clearly and permanently impressed, engraved or imprinted with the name of the Riverboat Gaming Operation, but bearing no value designation.

"Notice of Board Action": A Notice of Denial, Restriction, Suspension, Revocation, Nonrenewal, Fine, Exclusion or other action issued by the Board.

"Parent Company": A "parent company" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

"Payout": Winnings earned on a wager.

"Person": "Person" includes both individuals and Business Entities.

"Petitioner": An applicant, licensee, or Excluded Person who requests a hearing upon issuance of a Notice of Board Action.

"Progressive Controller": The hardware and software that controls all

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

communications among the machines within a progressive Electronic Gaming Device link and its associated progressive meter.

"Progressive Jackpot": An award for winning play in a Game, the value of which is determined by the contribution of a portion of each Wager placed into play or the combined amount of several wagers linked to a common jackpot award.

"Relative": Spouse, parents, grandparents, children, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law, whether by the whole or half blood, by marriage, adoption or natural relationship, and Dependents.

"Riverboat Gaming Operation": The owner licensee, Gaming Operations Manager, or, as the context requires, the conducting of Gaming and all related activities, including without limitation the purveying of food, beverages, retail goods and services, and transportation, on a Riverboat and at its Support Facilities.

"Signature": The definitive identity of an individual specific EPROM chip, determined by electronic analysis and reflective of the EPROM chip's game behavior capability.

"Substantial Owner": A person who has an ownership interest of 25% or more in a Business Entity.

"Supplier": Either a Gaming Operations Manager or a provider of Gaming Equipment, Gaming Equipment maintenance or repair services, security services or lessor of a Riverboat or dock facilities or a provider of any goods or services where payment is calculated by a percentage of a Riverboat Gaming Operation's revenues.

"Support Facility": A place of business which is part of, or operates in conjunction with, a Riverboat Gaming Operation and is owned in whole or in part by a holder of an Owner's or Supplier's license or any of their Key Persons, including without limitation Riverboats, offices, docking facilities, parking facilities, and land-based hotels or restaurants.

"Table Drop": The total amount of cash or cash equivalents contained in the drop box for Chips purchased at a Live Gaming Device.

"Table Win": The dollar amount won by the holder of an Owner's license through play at a live Game which is the total of the Table Drop plus ending Chip inventory plus credits minus opening Chip inventory minus fills.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

"Theoretical Payout Percentage": The percentage of Tokens wagered which will be returned to players by an Electronic Gaming Device.

"Token": A metal representative of value, redeemable for cash only at the issuing Riverboat Gaming Operation, and issued and sold by a holder of an Owner's license for use in Gaming.

"Token Dispenser": Any mechanical or electrical device designed for the purpose of dispensing an amount of Tokens equal to the amount of currency inserted into the device.

"Token Float": The difference between the total face value of Tokens received from vendors and the total face value of Tokens accounted for through an inventory conducted by the Riverboat Gaming Operation.

"Value Chip": A Chip, clearly and permanently impressed, engraved or imprinted with the name of the Riverboat Gaming Operation and the specific value of the Chip.

"Wager": A sum of money or thing of value risked.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART B: LICENSES

Section 3000.220 Applications

- a) Application Forms. Application forms shall be submitted by applicants as provided in this Section.
- 1) Owner's License. Owner's License Application Form and Business Entity Form or Personal Disclosure Form 1 for each of the applicant's Key Persons, or any other principal or investor as the Board may require.
 - 2) Supplier's License. Supplier's License Application Form and Business Entity Form or Personal Disclosure Form 1 for each of the applicant's Key Persons, or any other principal or investor as the Board may require.
 - 3) Occupation License, Level 1. Personal Disclosure Form 1. After the first year of licensure, applications for continuous renewal of Level 1 Occupational Licenses may include, in lieu of the Personal Disclosure Form 1, a disclosure affidavit, updated personal and background information, and updated tax and financial documents and information. The disclosure affidavit shall update and attest to the veracity of all required information.
 - 4) Occupation License, Level 2. Personal Disclosure Form 2.
 - 5) Occupation License, Level 3. Personal Disclosure Form 3.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

- b) Additional or Different Forms or Materials. An applicant may be required to submit forms or materials in addition to those listed in subsection (a).
- c) Application Procedures.

- 1) An applicant is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism or other action, or financial loss which may occur in connection with the application process.
- 2) Any misrepresentation or omission made with respect to an application may be grounds for denial of the application.
- 3) Application forms and requested materials shall be submitted in triplicate. Application forms and requested materials for Owner's and Supplier's licenses shall be submitted in bound form.
- 4) Applicants for Occupational licenses shall be photographed and fingerprinted at the time of application at a place designated by the Administrator.
- 5) An application shall be deemed filed when the completed application form, including all required documents and materials, and the application fee have been submitted.

- d) Amendments and Incorporation by Reference.

- 1) An application may be amended only upon leave of the Board.
- 2) The Board may allow information, documents, or other materials submitted by an applicant to be incorporated by reference into a subsequent application.

- e) Withdrawal of Applications.

- 1) An Owner's or Supplier's application may be withdrawn only upon leave of the Board.

- A) A request for leave to withdraw an application for an Owner's license shall not be considered by the Board unless received prior to Board action regarding a finding of preliminary suitability under Section 3000.230(c) 300-230(c). However, applicants who have been found preliminarily suitable may seek leave to withdraw after such finding.

- B) A request for leave to withdraw an application for a Supplier's license shall not be considered by the Board unless received prior to Board action on licensure under Section 3000.240.

- C) The Board may deny leave to withdraw an Owner's or Supplier's application if it determines that withdrawal of the application would not be in the best interests of the public and the Gaming industry.

- 2) If an application for an Owner's or Supplier's license is withdrawn, the applicant may not reapply for a license within one year from the date withdrawal is granted, without leave of the Board.

- 3) Applications for Occupational licenses may be withdrawn without leave of the Board, if written notification of withdrawal is

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

received prior to Board action on licensure under Section 3000.245 and unless the intended withdrawal is objected to by the Administrator in which case leave of the Board is required.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 3000.222 Identification and Requirements of Key Persons

- a) The Board shall certify for each applicant for or holder of an Owner's or Supplier's license each position, individual or Business Entity that is to be approved by the Board and maintain suitability as a Key Person of the licensee.

- b) Supplier Key Persons. With respect to an applicant for or holder of a Supplier's license, Key Person shall include:

- 1) The Chief Executive Officer and the Chief Operating Officer, or their functional equivalents, and each individual or Business Entity that is a Substantial Owner.

- 2) Each individual or Business Entity that is a Substantial Owner of any Business Entity that is a Substantial Owner of the Illinois applicant or licensee.

- 3) All other individuals or Business Entities that, upon review of the applicant's or licensee's Table of Organization, Ownership and Control submitted under Section 3000.223, the Board determines hold a position or a level of ownership, control or influence that is material to the regulatory concerns and obligations of the Board for the specified licensee or applicant.

- c) Owner Licensee Key Persons. With respect to an applicant for or the holder of an Owner's license, Key Person shall include:

- 1) Any Business Entity and any individual with an ownership interest or voting rights of 5 percent or more in the licensee or applicant, and the trustee of any trust holding such ownership interest or voting rights.

- 2) The directors of the licensee or applicant and its chief executive officer, president and chief operating officer, or their functional equivalents.

- 3) All other individuals or Business Entities that, upon review of the applicant's or licensee's Table of Organization, Ownership and Control submitted under Section 3000.223, the Board determines hold a position or a level of ownership, control or influence that is material to the regulatory concerns and obligations of the Board for the specified licensee or applicant.

- d) Level 1 Occupational Licensees. Individuals required to apply for and hold a Level 1 Occupational License, pursuant to Section 3000.200(c), may also be certified by the Board as Key Persons. For such individuals, the disclosure and approval requirements and the standards for compliance with this Part shall be those related to occupational licensure.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) An individual denied occupational licensure or whose license is revoked by a final determination of the Board is unsuitable and shall not be allowed to function as a Key Person of any applicant or licensee.
- 2) An individual who, by voluntary action, relinquishes status as a Level 1 Occupational Licensee and remains or becomes a Key Person shall be required to comply with all requirements imposed by the Board and this Part upon Key Persons.

e) Each individual or Business Entity designated as a Key Person shall:

- 1) File a Business Entity Form or Personal Disclosure Form 1 or its equivalent.
- 2) File, on an annual basis, a disclosure affidavit, updated personal and background information, and updated tax and financial documents and information.
- 3) Comply with the applicable provisions of this Part and disclose promptly to the Board any material changes in status or information previously provided to the Board.
- 4) As required, cooperate fully with any investigation conducted by the Board.
- 5) Maintain suitability as a Key Person.
- 6) Be subject to a fine for each act or omission that is grounds for discipline of a licensee under the provisions of Section 3000.110.

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 3000.223 Disclosure of Ownership and Control

- a) General Requirements. Each applicant for or holder of an Owner's or Supplier's license shall provide to the Board and maintain on a current basis a Table of Organization, Ownership and Control. The Table of Organization, Ownership and Control shall contain the information required by this Section, in sufficient detail to identify the hierarchy of individuals and Business Entities that, through direct or indirect means, manage, own or control the interests and assets of the applicant or license holder.

b) Direct Ownership or Control. The Table of Organization, Ownership and Control shall identify the following information concerning the direct management, ownership and control of the applicant or license holder.

- 1) The name and percentage of ownership of each individual or Business Entity with an ownership interest in the applicant or licensee. If the licensee or applicant is a Business Entity whose stock is traded publicly, the identification of ownership shall be provided as required in subsection (d).

2) A table of organization reflecting the management and governance structure of the licensee or applicant, including the name and office or position of each individual serving as an officer.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

director or member of an executive committee or similar governing body and identifying each managerial position and each managerial employee reporting directly to an officer of the company or its board of directors.

- 3) For each trust holding ownership interest, and for each voting trust, the name of the trustee of the trust.

4) For each Business Entity with an ownership interest, the name and position of each officer, director and all persons reporting to the chief executive officer or the board of directors of the Business Entity.

- c) Intermediary Entities and Ultimate Ownership. To the extent that ownership of or control over the applicant or licensed entity is exercised through intermediary Business Entities, the Table of Organization, Ownership and Control must identify, in hierarchical fashion, all such intermediary entities and their officers, directors, trustees and persons reporting to the chief executive officer or board of directors, and provide similar information on any parent Business Entity. If the ultimate parent is a publicly traded company, the ownership identification requirements for this Business Entity shall be provided as required in subsection (d).

d) Publicly Traded Company Ownership. If a Business Entity identified in subsection (b) or (c) is a publicly traded company, the following information shall be provided in the Table of Organization, Ownership and Control:

- 1) The name and percentage of ownership interest of each individual or Business Entity with ownership of 5 percent or more of the voting shares of the entity, to the extent such information is known or contained in 13D or 13G Securities and Exchange Commission filings.

2) To the extent known, the names and percentage of interest of ownership of persons who are relatives of one another and who together (as individuals or through trusts) exercise control over or own more than 10 percent of the voting shares of the entity.

- 3) Any trust holding a 5 percent or more ownership or voting interest in the company, to the extent such information is known or contained in 13D or 13G Securities and Exchange Commission filings.

e) The information contained in the Table of Organization, Ownership and Control provided to the Board may be disclosed under the Freedom of Information Act unless otherwise exempt by law or Board rule.

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 3000.224 Economic Disassociation

- a) Each owner and supplier licensee shall provide a means for the economic disassociation of a Key Person in the event such economic

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

disassociation is required by an order of the Board.

- b) Based upon findings from an investigation into the character, reputation, experience, associations, business probity and financial integrity of a Key Person, the Board may enter an order upon the licensee to require the economic disassociation of such Key Person. A violation of an order of the Board for the economic disassociation of a Key Person may result in a complaint under Subpart K. Any hearing concerning such complaint shall be a hearing on the merits of the Board's determination that economic disassociation is warranted. The licensee shall be considered the party to such hearing.

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 3000.225 Business Entity and Personal Disclosure Filings

- a) In order to conduct required investigations into the background, character, reputation, business probity, and financial integrity of certain individuals and Business Entities associated with applicants or licensees, the Board requires the filing of the Business Entity Form or Personal Disclosure Form 1 and related information as well as the filing of periodic supplements to this disclosure information. Comprehensive information is required of:

- 1) Each Key Person.
 - 2) Individuals required to hold a Level 1 Occupational License.
- b) The Business Entity Form, Personal Disclosure Form 1, or other specified disclosure information, upon an order of the Board may be required of:

- 1) Any individual or Business Entity holding or represented as holding an option or other claim of or benefit from ownership interest in an applicant or licensee and any shareholder of the applicant or licensee not otherwise designated as a Key Person.
 - 2) Any individual that controls an applicant or licensee or that is controlled by a Key Person of an applicant or licensee whom the Board determines holds a sensitive position or relationship affecting the integrity of Gaming in Illinois.
 - 3) An individual or Business Entity that provides, through a private transaction, substantial capital for the benefit of an applicant or licensee.
 - 4) Any individual that, through an ownership or voting trust, controls an ownership interest in an applicant or licensee.
- c) Personal disclosure information shall be considered confidential information, except as provided by law or this Part.
- d) The obligation to file a Business Entity Form or Personal Disclosure Form 1 and other information is a mutual obligation of the Person required to file and the owner or supplier licensee or applicant with whom the Person is affiliated.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 3000.236 Owner's License Renewal

Upon the expiration of an initial Owner's license term, or following a one year license renewal period, a license may be renewed for a one year period subject to the provisions of the Act and this Section 3000.236.

- a) The renewal requirements shall include the following:
- 1) Beginning with the initial renewal application the licensee shall submit an owner's renewal application and the requisite Business Entity and Personal Disclosure Forms. The owner licensee shall may submit disclosure information pursuant to Section 3000.222(e)(2) affidavits from each Key Person who has previously filed person-who-would-otherwise-be-required-to-file a Business Entity or Personal Disclosure Form, updating, and attesting to the veracity of information on the his-or-her previously filed Business Entity or Personal Disclosure Form and setting forth any required additional or different information than previously submitted. Nothing in this Section shall be interpreted to alter the ongoing duty to disclose changes in information;
 - 2) Unless a later date is authorized in writing by the Administrator, materials submitted pursuant to this Section shall be provided in triplicate at least ninety days prior to the expiration of the Owner's license term, and must be accompanied by the required annual licensing fee; and
 - 3) As part of its renewal submission, the licensee shall provide documentation of the following:
 - A) Measures taken by the licensee to assure compliance with the Act and the rules promulgated thereunder;
 - B) Adherence to the economic development purposes and requirements of the Act, including conformance to specific commitments made in conjunction with an initial application or subsequent renewal applications;
 - C) Adherence to specific conditions or requirements adopted by the Board at the time a previous renewal was authorized;
 - D) Ability to maintain a financially viable gaming entity;
 - E) Any specific plans for changes in the financing, ownership or structure of the licensee and its substantial owner(s);
 - F) An assessment of the economic impact of the gaming operation on employment, business and economic development related to the State of Illinois and related to the area of the State in which the gaming operation is conducted;
 - G) Information relating to the licensee's or its substantial owners' involvement in gaming in other jurisdictions;
 - H) Verification of tax filings with the Illinois Department of Revenue during the preceding licensing period;
 - I) Summary of all litigation to which licensee is or was a

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

party during the preceding licensing period;
 J) Responses to specific questions or concerns raised by the Board in its renewal investigation and review process; and
 K) Evidence of continued support of the licensee from its community.

- b) The Board shall base its renewal of an Owner's license thereon upon:
- 1) The timeliness and responsiveness of the information submitted by the holder of a license as required pursuant to Section 3000.236;
 - 2) The Board's analysis of the owner licensee's gaming gaming operations, including the nature, frequency, extent and any pattern of past violations of the Act and this Part the--rules promulgated-thereunder;
 - 3) The financial status and the current and projected financial viability of the entity;
 - 4) Information on the background, character and integrity of the Key Persons, owners, directors and partners of the entity;
 - 5) The owner licensee's pattern of compliance exhibited through quarterly, special and annual compliance reviews or audits performed by the Board staff or contract audit firms;
 - 6) The licensee's commitment to economic development in the community and in Illinois;
 - 7) The overall adherence of the licensee to all requirements of the Act and this Part the--rules-promulgated-thereunder; and
 - 8) Any other information the Board deems appropriate.

c) Action of the Board

- 1) The Board shall act at a public meeting on the renewal of an Owner's license license and may afford representatives of the licensee and members of the general public an opportunity for commenting upon the renewal.
- 2) If the Board decides to deny license renewal, it shall direct the Administrator to issue a Notice of Denial to the licensee by certified mail or personal delivery.

d) Request for Hearing

- 1) An owner licensee served with a Notice of Denial may request a hearing in accordance with Section 3000.405.
- 2) If a hearing is not requested, the Notice of Denial becomes the final order of the Board denying the owner licensee's application for renewal.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 3000.241 Renewal of Supplier's License

- a) Renewal Requirements
 Except as provided in subsection (d), upon the expiration of an initial Supplier's license license issued pursuant to Section 3000.240, the license may be renewed subject to the provisions of the

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

Act and this Section 3000.241 for a licensure period of four years. The renewal requirements shall include, but not be limited to, the following:

- 1) Every fourth year following the initial licensing, the licensee shall provide documentation of the following in lieu of a renewal application:
 - A) A written statement requesting renewal of the Supplier's license license;
 - B) A written statement verifying past compliance with the annual disclosure affidavit required under Section 3000.240(h)(2)(A);
 - C) Measures taken by the licensee to assure compliance with the Act and this Part rules-promulgated-thereunder; and
 - D) Responses to specific questions or concerns raised by the Board in its licensure investigation and review process.
- 2) In addition to the information submitted by the licensee pursuant to subsection (a)(1), Key Persons of the licensee who have previously filed Business Entity or Personal Disclosure Forms shall submit disclosure information pursuant to Section 3000.222(e)(2), updating, and affidavits attesting to the veracity of all previously submitted materials and setting forth any required additional or different information whiteh--is different from that which has been previously submitted.
- 3) Materials submitted pursuant to this Section shall be provided at least sixty days prior to the renewal date, and must be accompanied by the required annual licensing fee.
- 4) Nothing in this Section shall be interpreted to alter the duty to comply with the annual disclosure and fee requirements as set forth in Section 3000.240 or to disclose changes in information as set forth in Section 3000.140.

b) Board Decision

- The Board shall base its renewal of a Supplier's license license upon:
- 1) The timeliness and responsiveness of the information submitted by the licensee as required pursuant to this Section 3000.241;
 - 2) The background, reputation, character and integrity of the Key Persons;
 - 3) The licensee's continuing ability to maintain the quality of its products or services;
 - 4) The overall adherence of the licensee to all requirements of the Act and this Part the--rules-promulgated-thereunder; and
 - 5) Any other information the Board deems appropriate and necessary to maintain public confidence in the credibility and integrity of gambling operations, as required by Section 2(b) of the Act.

c) Term of Renewed Licenses

Unless otherwise restricted pursuant to subsection (d) of this Section, renewed licenses shall be issued for a term of four years.
 Licenses Restricted on Renewal

- 1) Upon issuing a renewal license, the Board may restrict the term

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

- of or impose conditions upon a license.
- 2) A restricted license may be issued on renewal in the event the Board has concerns regarding:
 - A) The nature or quality of a product provided by the licensee in Illinois;
 - B) The business experience or background of the licensee's Key Persons;
 - C) The business practices in Illinois and other jurisdictions of the licensee, its Key Persons or any person who directly or indirectly controls the licensee;
 - D) The licensee's reputation;
 - E) The licensee's failure to comply with the Act and this Part.
 - 3) The term of a license restricted on renewal shall be for one year from the date of issuance.
 - 4) If, at the conclusion of the one year period for licenses restricted on renewal, the Board deems that the licensee has addressed and rectified the Board's concerns, the Board may issue a four year renewal license.
 - 5) Failure of the licensee to properly address and rectify the Board's concerns within a one year period may result in the issuance of another license restricted on renewal, the non-renewal of the license or disciplinary action authorized under Section 5 of the Act.
- e) Action of the Board
- 1) The Board shall act at a public meeting on the renewal of a Supplier's license license.
 - 2) If the Board decides to deny license renewal, it shall direct the Administrator to issue a Notice of Denial to the supplier.
 - 3) If the Board decides to issue a restricted license on renewal, it shall direct the Administrator to issue a Notice of Restricted License by certified mail or personal delivery. Such Notice shall specify the reasons for a restricted license.
- f) Request for Hearing
- 1) A supplier licensee served with a Notice of Denial may request a hearing in accordance with Section 3000.405.
 - 2) A supplier licensee served with a Notice of Restricted License on Renewal may request a hearing in accordance with Section 3000.405.
 - 3) If a hearing is not requested, the Notice of Denial or Notice of Restricted License on Renewal becomes the final order of the Board.
- (Source: Amended at 22 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Narrative and Planning Policies
- 2) Code Citation: 77 Ill. Adm. Code 1100
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1100.60	Amendment
1100.70	Amendment
1100.220	Amendment
1100.510	Amendment
1100.520	Amendment
1100.560	Amendment
1100.570	Amendment
1100.580	Amendment
1100.590	Amendment
1100.600	Repeal
1100.630	Amendment
1100.660	Amendment
1100.661	New Section
1100.680	Amendment
1100.710	Repeal
1100.720	Amendment
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]
- 5) A Complete Description of the Subjects and Issues Involved: Changes to clarify Part 1100 are proposed in the data appendices and Definitions Sections. Additionally, changes are proposed regarding planning area configuration, station and/or bed need methodology, and review criterion in the following categories of service: Acute Mental Illness, Burn Treatment, and Chronic Renal Dialysis. Also, the Health Facilities Planning Board is proposing the repeal of the following categories of service: Therapeutic Radiology Equipment and Extracorporeal Shockwave Lithotripsy. New provisions and review criterion regarding the Sheltered Care and Intraoperative Magnetic Resonance Imaging Categories of Service are also proposed.
- 6) Will this rulemaking replace any emergency rulemaking currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The purpose of the Illinois Health Facilities Planning Act (Planning Act) is to establish a procedure

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

designed to contain health care costs by preventing unnecessary construction or modification of health care facilities. The proposed amendments and new Section to Part 1100 will promote the statute's purpose of improving the "ability of the public to obtain necessary health services" and "establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public" by assuring that proposed transactions are reviewed in contrast with emerging trends and technological advancements in the healthcare field.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Donald Jones
Health Facilities Planning Board
Illinois Department of Public Health
Division of Facilities Development
525 West Jefferson, Second Floor
Springfield, Illinois 62761
(217)782-3516

All written comments received within 45 days after the *Illinois Register* will be considered.

A public hearing will be held on Wednesday, June 24, 1998, at 1:30 p.m. at the Executive Plaza Hotel, 71 East Wacker Drive, Chicago, Illinois. The hearing will be for the sole purpose of gathering public comment on the proposed amendments. Persons interested in presenting testimony at this hearing are advised that the State Board will follow these procedures in the conduct of the hearing:

- 1) Each person presenting oral testimony is requested to provide to the State Board a written (preferably typed) copy of such testimony at the time the oral testimony is presented.
- 2) No person will be recognized to speak for a second time until all persons wishing to testify have done so. The State Board may limit the time the hearing is open and limit the time of individual testimony based upon the number of persons wishing to testify. All testimony shall conclude at the specific times except that an individual in the midst of presenting testimony shall be allowed to complete his/her testimony.
- 3) In order to provide for a balanced presentation of views and to facilitate the orderly conduct of the hearing, the State Board may impose such other rules of procedure, including the order of call of

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

witnesses, as necessary.

These rules may have an impact of small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Donald Jones at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Health care facilities that meet the definition of small businesses.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendment begins on the next page:

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER II: HEALTH FACILITIES
PLANNING BOARD

SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1100

NARRATIVE AND PLANNING POLICIES

SUBPART A: GENERAL NARRATIVE

Section	
1100.10	Introduction
1100.20	Authority
1100.30	Purpose
1100.40	Health Maintenance Organizations (Repealed)
1100.50	Subchapter Organization
1100.60	Mandatory Reporting of Data
1100.70	Data Appendices
1100.80	Institutional Master Plan Hospitals (Repealed)
1100.90	Public Hearings

SUBPART B: GENERAL DEFINITIONS

Section	
1100.210	Introduction
1100.220	Definitions

SUBPART C: PLANNING POLICIES

Section	
1100.310	Need Assessment
1100.320	Staffing
1100.330	Professional Education
1100.340	Public Testimony
1100.350	Multi-Institutional Systems
1100.360	Modern Facilities
1100.370	Occupancy-Utilization Standards
1100.380	Systems Planning
1100.390	Quality
1100.400	Location
1100.410	Needed Facilities
1100.420	Discontinuation
1100.430	Coordination with Other State Agencies

SUBPART D: NEED FORMULAS/UTILIZATION TARGETS

Section	
1100.510	Introduction, Formula Components and Planning Area Development

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Policies

1100.520	Medical-Surgical/Pediatric Categories of Service
1100.530	Obstetric Category of Service
1100.540	Intensive Care Category of Service
1100.550	Comprehensive Physical Rehabilitation Category of Service
1100.560	Acute Mental Illness Category Categories of Service
1100.570	Substance Abuse/Addiction Treatment Category of Service
1100.580	Neonatal Intensive Care Category of Service
1100.590	Burn Treatment Category of Service
1100.600	Therapeutic Radiology Equipment (Repealed)
1100.610	Open Heart Surgery Category of Service
1100.620	Cardiac Catheterization Services
1100.630	Chronic Renal Dialysis Category of Service
1100.640	Non-Hospital Based Ambulatory Surgery
1100.650	Computer Systems (Repealed)
1100.660	General Long-Term Care-Nursing Care Category of Service
1100.661	General Long-Term Care-Sheltered Care Category of Service
1100.670	Specialized Long-Term Care Categories of Service
1100.680	Intraoperative Magnetic Resonance Imaging Category of Service
1100.690	High Linear Energy Transfer (L.E.T.)
1100.700	Positron Emission Tomographic Scanning (P.E.T.)
1100.710	Extracorporeal Shock Wave Lithotripsy (Repealed)
1100.720	Selected Organ Transplantation
1100.730	Kidney Transplantation
1100.740	Subacute Care Hospital Model
1100.750	Postsurgical Recovery Care Center Alternative Health Care Model
1100.760	Children's Respite Care Center Alternative Health Care Model

APPENDIX A

Applicable Codes and Standards Utilized in 77 Ill. Adm.
Code: Chapter II, Subchapter a

AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 15476; amended at 9 Ill. Reg. 3344, effective March 6, 1985; amended at 11 Ill. Reg. 7311, effective April 1, 1987; amended at 12 Ill. Reg. 16079, effective September 21, 1988; amended at 13 Ill. Reg. 16055, effective September 29, 1989; amended at 16 Ill. Reg. 16074, effective October 2, 1992; amended at 18 Ill. Reg. 2986, effective February 10, 1994; amended at 18 Ill. Reg. 8448, effective July 1, 1994; emergency amendment at 19 Ill. Reg. 1941, effective

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

January 31, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 2985, effective March 1, 1995; amended at 19 Ill. Reg. 10143, effective June 30, 1995; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2594; amended at 20 Ill. Reg. 14778, effective November 8, 1996; amended at 21 Ill. Reg. 6220, effective May 30, 1997; expedited correction at 21 Ill. Reg. 17201, effective May 30, 1997; amended at 22 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL NARRATIVE

Section 1100.60 Mandatory Reporting of Data

Sections Section 13 and 14.1 of the Act require requires all health care facilities operating in Illinois to provide data needed for planning. Section 14.1 provides authority for the State Board to impose fines for failure to provide requested information. In addition, Section 13 of the Act provides the following sanctions for failure to supply requested data:

- a) Health facilities not complying with this requirement shall be reported to the appropriate licensing, accrediting and certifying agencies, both State and Federal.
- b) Health facilities not complying with this requirement shall be reported to the appropriate third-party payors and other payment agencies; State, Federal and private.

(Source: Amended at 22 Ill. Reg. _____, effective _____.)

Section 1100.70 Data Appendices

The Illinois Department of Public Health State-Agency publishes data appendices at least once every three years that annually-which include inventories of health care facilities and services. Inventories contain facility capacity, need estimates, utilization and socio-economic information. Throughout the year, inventories to the Subchapter subchapter (see 77 Ill. Adm. Code 1110) are up-dated on the 15th day of each month (excluding holidays and weekends). Examples of changes included in the monthly update are: permits issued by the State Board; transactions such as a change of facility name or change in bed total; and declaratory rulings made by the State Board.

(Source: Amended at 22 Ill. Reg. _____, effective _____.)

SUBPART B: GENERAL DEFINITIONS

Section 1100.220 Definitions

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960] (###-Rev.-Stat-1993-CH-111-1/27-pars-1151-et-seq.).

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

"Admissions" means the number of patients accepted for inpatient service during a 12-month period; the newborn are not included.

"Applicable Codes and/or Current Recognized Standards" means the current official codes of governmental bodies applicable under law or regulation to Illinois health facilities and/or standards of health facility design, construction and equipment promulgated on a regular or permanent basis by an authority, public or private. A listing of the applicable codes utilized in the application review process may be found in Appendix A of this Part.

"Average Daily Census (ADC)" means over a 12-month period the average number of inpatients receiving service on any given day.

"Average Length of Stay (ALOS)" means over a 12-month period the average duration of inpatient stay expressed in days as determined by dividing total inpatient days by total admissions.

"Bed Capacity or Existing Bed Capacity" means the number of beds recognized for planning purposes at a facility as determined by the Illinois Department of Public Health.

The bed capacity which is utilized for each category of service identified in the Bed Need Determination Section reflects one of the following:

Measured or Surveyed Bed Capacity -- the number of beds by category of service which could be operated based on the amount of clear and usable floor area allowing:

100 square feet per bed in single-occupancy rooms.

80 square feet per bed in multi-occupancy rooms.

40 square feet per bassinets in pediatric nurseries.

Functional Bed Capacity -- the number of beds by category of service the facility considers appropriate to place in patient rooms taking into account patient care requirements and the ability to perform the regular functions of patient care required for patients for the particular category of service involved.

Licensed Bed Capacity -- the number of beds by category of service recognized and licensed by the Illinois Department of Public Health. (Currently applies only to Long-Term Care Facilities.)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

"Category of Service" means a grouping by generic class of various types or levels of support functions, equipment, care or treatment provided to patient/residents. Examples include but are not limited to medical-surgical, pediatrics, therapeutic--radiology, etc. A category of service may include subcategories or levels of care which identify a particular degree or type of care within the category of service.

"Executive Secretary or Secretary" means the chief executive officer of the State Board, responsible to the Chairman and, through the Chairman, responsible to the State Board for the execution of its policies and procedures.

"Health Service Area (HSA)" means the following geographic areas:

HSA I - Illinois Counties of Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago

Boone-County BeKalb-County Stephenson-County
Carroll-County Ogle-County Winnebago-County
Lee-County Jo-Daviess-County Whiteside-County

HSA II - Illinois Counties of Bureau, Fulton, Henderson, Knox, LaSalle, Marshall, McDonough, Peoria, Putnam, Stark, Tazewell, Warren, and Woodford

LaSalle-County Peoria-County
Putnam-County Stark-County
Marshall-County Bureau-County
Woodford-County Knox-County
Tazewell-County Fulton-County

Warren-County
Henderson-County
McDonough-County

HSA III - Illinois Counties of Adams, Brown, Calhoun, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott

Hancock-County Jersey-County Menard-County
Adams-County Greene-County Logan-County
Pike-County Scott-County Sangamon-County
Brown-County Morgan-County Macoupin-County
Schuyler-County Cass-County Christian-County
Calhoun-County Mason-County Montgomery-County

HSA IV - Illinois Counties of Champaign, Clark, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Iroquois, Livingston, Macon, McLean, Moultrie, Piatt, Shelby, and Vermilion

Champaign-County Coles-County Piatt-County

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Vermillion-County Cumberland-County McLean-County
Ford-County Douglas-County Livingston-County
Iroquois-County Moultrie-County BeWitt-County
Edgar-County Shelby-County
Clark-County Macon-County

HSA V - Illinois Counties of Alexander, Bond, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Washington, Wayne, White, and Williamson

Bond-County Edwards-County Williamson-County
Fayette-County Wabash-County Saline-County
Effingham-County Washington-County Gallatin-County
Jasper-County Jefferson-County Union-County
Crawford-County Perry-County Johnson-County
Clay-County Randolph-County Pope-County
Richland-County Jackson-County Hardin-County
Lawrence-County Franklin-County Alexander-County
Marion-County Hamilton-County Pulaski-County
Wayne-County White-County Massac-County

HSA VI - City of Chicago

City of Chicago

HSA VII - DuPage County and Suburban Cook County

Suburban-Cook-County DuPage-County

HSA VIII - Illinois Counties of Kane, Lake, and McHenry

Kane-County Lake-County McHenry-County

HSA IX - Illinois Counties of Grundy, Kankakee, Kendall, and Will
Will-County Grundy-County
Kendall-County Kankakee-County

HSA X - Illinois Counties of Henry, Mercer, and Rock Island
Rock-Island-County Mercer-County Henry-County

HSA XI - Illinois Counties of Clinton, Madison, Monroe, and St. Clair

Madison-County Clinton-County
St-Clair-County Monroe-County

"Hospital" means a facility, institution, place or building licensed

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

evaluate services. Each subsection provides information on: planning areas utilized, how beds are counted, the applicable age group or groups, occupancy targets, subservice classifications included in the equation, use rate minimums and maximums, and the formula for the determination of total-bed need for beds and services. The Appendices to 77 Ill. Adm. Code 1110 contain an appropriate formula data including the delineation of planning areas, population and utilization statistics. The Appendices are available from IDPH the Agency at 525 West Jefferson Street in Springfield, Illinois 62761.

b) Formula Components

Formulas utilized by the State Board in projecting the need for beds and services number-of-needed-beds can be categorized as demand based or incidence based formulas. Each of these formula types represents a different conceptual outlook and incorporates different data elements as formula variables.

1) Demand Formula for services such as M-S/Pediatrics, Intensive Care, Rehabilitation and General Long-Term Care Categories of Service. Demand equations utilize the concept that what has occurred in the past will occur in the future. The formulas utilize inpatient days of care and population projections as the key data variables. The first formula step is to establish a utilization to population ratio (use rate). This ratio basically says that within a population an average number of inpatient days of care will be generated. This rate is then applied to the projected population estimate for the same area. This states that if the rate of use is constant, a future population can be expected to generate an identifiable number of inpatient days. These projected days are then converted to a daily census (projected days - 365) and multiplied by an occupancy target. The projected day figure can be equated to 100% occupancy of service for which need is projected. The occupancy target is a means of allowing additional beds to be added to an area to insure that sufficient beds exist to handle days when inpatient admissions are exceptionally high. This type of formula is tempered in use by the application of minimum and maximum use rates. These rates are controls and serve to inflate (minimum use rate) or deflate (maximum use rate) the projected bed need. These rates are established when historical patterns of use are influenced by a maldistribution of services. By adding to or subtracting from the number of needed beds, development of new beds and facilities can be influenced to add beds to underserved areas and to restrict bed growth in areas of high bed to population ratios.

2) Incidence Formula for services such as Obstetrics, Acute Mental Illness and Burn Treatment Categories of Service. This type of formula utilizes the incidence level of a disease or a condition within a population to predict need. Utilizing national or State rates, the formula predicts the number of planning area residents who will need hospitalization based on the number of people who

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

live in the planning area. Utilizing a standard estimate of how long a patient will be hospitalized, admissions are converted into patient days. As in the demand formulas, days are then converted to an average daily census and an occupancy target applied to obtain area bed need.

c) Planning Area Development Policies

The State Board recognizes the need to establish planning areas for the purpose of assessing and determining the need for health care facilities, beds, and services. In establishing planning areas the following principles and factors apply:

- 1) For purposes of delineating planning area boundaries and for purposes of calculating population estimates, the smallest geographical areas to be utilized shall be community areas for the city of Chicago and townships for all other areas in the State outside of Chicago.
- 2) Source of patient information shall be the primary basis for the allocation of geographic areas (e.g., townships, community areas, counties) into planning areas. As a general principle, 50% or more of the residents receiving care from facilities or resources located within the planning area should reside within the planning area.

AGENCY NOTE: Source of patient information may only be available on a zip code basis. In such cases, the relationship between zip code boundaries and community area or township boundaries will be approximated for use in establishing planning area boundaries.

- 3) Planning area boundaries should be established taking into consideration the number and type of existing health care facilities and services located within the area, shared and overlapping market areas between or among facilities, and patterns of patient referral to area health care facilities. Planning areas may vary in size in order to insure access within a reasonable travel time.
- 4) The primary market area for health care facilities located within a planning area should serve a substantial number of residents of the planning area. A primary market area means the geographic location in which 50% or more of a facility's patients/residents reside. The State Board recognizes that certain health care facilities (e.g., tertiary and specialty facilities) may have primary market areas that are not entirely contained within the planning area in which the facility is located.
- 5) Planning area boundaries can also be influenced by the following factors:
 - A) natural geographic boundaries;
 - B) political boundaries that affect the patterns of services;
 - C) transportation patterns and systems;
 - D) time and distance required to access service by area residents;
 - E) affiliations between health care facilities and other health

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

long-term care facilities may be influenced by such factors as, but not limited to: location of next of kin or relatives; seeking services of a specialized nature such as treatment for various diseases or disabilities; or seeking services related to religious, ethnic, or fraternal needs. Because of the significant degree of mobility that is exercised in seeking long term care services, the State Board shall not allocate portions of a facility's beds and services to more than one planning area.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.520 Medical-Surgical/Pediatric Categories of Service

a) Planning Areas: 40 areas in 6 regions

1) Region A (comprised of HSAs 6, 7, 8, and 9)

A) Planning Area A-1: City of Chicago Community Areas of Uptown, Lincoln Square, North Center, Lakeview, Lincoln Park, Near North Side, Edison Park, Norwood Park, Jefferson Park, Forest Glen, North Park, Albany Park, Portage Park, Irving Park, Dunning, Montclare, Belmont Cragin, Hermosa, Avondale, Logan Square, O'Hare, and Edgewater.

B) Planning Area A-2: City of Chicago Community Areas of Humboldt Park, West Town, Austin, West Garfield Park, East Garfield Park, Near West Side, North Lawndale, South Lawndale, Lower West Side, Loop, Armour Square, McKinley Park, and Bridgeport.

C) Planning Area A-3: City of Chicago Community Areas of Douglas, Oakland, Fuller Park, Grand Boulevard, Kenwood, Near South Side, Washington Park, Hyde Park, Woodlawn, South Shore, Chatham, Avalon Park, South Chicago, Burnside, Calumet Heights, Roseland, Pullman, South Deering, East Side, Garfield Ridge, Archer Heights, Brighton Park, New City, West Elsdon, Gage Park, Clearing, West Lawn, West Englewood, Englewood, Chicago Lawn and Greater Grand Crossing.

D) Planning Area A-4: City of Chicago Community Areas of West Pullman, Riverdale, Hegewisch, Ashburn, Auburn Gresham, Beverly, Washington Heights, Mount Greenwood, and Morgan Park; Cook County Townships of Lemont, Stickney, Worth, Lyons, Palos, Calumet, Thornton, Bremen, Orland, Rich, and Bloom.

E) Planning Area A-5: DuPage County.

F) Planning Area A-6: Cook County Townships of River Forest, Oak Park, Cicero, Berwyn, Riverside, Proviso, Leyden, and Norwood Park.

G) Planning Area A-7: Cook County Townships of Maine, Elk Grove, Schaumburg, Palatine and Wheeling.

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

care entities which affect patterns of service; F) trade and economic market patterns that influence the financing of health care services; G) the lack of existing health resources or services in an area;

H) referral patterns to obtain tertiary services;

I) the impact of reimbursement or managed care programs;

J) socio-economic factors such as but not limited to population density, income level, or age characteristics.

6) Planning area boundaries may vary by category of service. The State Board recognizes that certain services (e.g., neonatal ICU, open heart surgery, lithotripsy, etc.) may require a large population base in order to assure the provision of quality care and to be cost effective.

7) Planning areas for the acute care categories of services of medical-surgical/pediatrics, obstetrics and intensive care must contain a minimum population of 40,000. This population base would be sufficient to support a 100 bed hospital based upon a facility target occupancy of 80% and an inpatient day use rate of 725 days per 1,000 population.

8) Planning areas for general long-term service must contain a minimum population of 10,000. This population base would be sufficient to support 100 nursing care beds based upon a rate of 9 beds per 1,000 population (projected 1997 statewide need divided by projected 1997 State population) with a target occupancy of 90%.

9) The State Board recognizes that some hospitals, due to location, may provide services to a substantial number of residents from an adjacent planning area. For instance, hospitals located near a planning area boundary may have a primary market area which serves residents in other planning areas. In instances where at least 40% of a facility's inpatient admissions for the medical-surgical/pediatrics, obstetrics and intensive care categories of service are residents of an adjoining planning area, the State Board shall allocate (based upon 1994 patient source data on file with IDPH the State-Agency) a proportionate number of the hospital's beds and inpatient utilization in whole numbers, to the adjoining planning area. For example, ABC Community Hospital, with 200 M-S/Peds, 30 ICU and 20 OB beds, is located in Planning Area A. Patient source data indicates that 43% of its admissions are residents of Planning Area B. Therefore, 86 M-S beds, 13 ICU beds, and 9 OB beds and a corresponding 43% allocation of ABC Community Hospital's admissions and patient days would be allocated to Planning Area B.

10) The State Board recognizes that some long-term care facilities may have a primary market area that is not contained within the planning area in which the facility is located. Placement in

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- H) Planning Area A-8: City of Chicago Community Areas of Rogers Park and West Ridge; Cook County Townships of Northfield, New Trier, Niles, and Evanston.
- I) Planning Area A-9: Lake County.
- J) Planning Area A-10: McHenry County.
- K) Planning Area A-11: Cook County Townships of Barrington and Hanover; Kane County Townships of Hampshire, Rutland, Dundee, Burlington, Plato, Elgin, Virgil, Campton, and St. Charles.
- L) Planning Area A-12: Kendall County; Kane County Townships of Kaneville, Black Berry, Aurora, Big Rock, Sugar Grove, Batavia and Geneva.
- M) Planning Area A-13: Grundy and Will Counties.
- N) Planning Area A-14: Kankakee County.
- 2) Region B (comprised of HSA 1)
- A) Planning Area B-1: Boone and Winnebago Counties; DeKalb County Townships of Franklin, Kingston, and Genoa; Ogle County Townships of Monroe, White Rock, Lynnvillle, Scott, Marion, Byron, Rockvale, Leaf River, and Mount Morris.
- B) Planning Area B-2: Jo Daviess and Stephenson Counties; Ogle County Townships of Forreston, Maryland, Lincoln, and Brookville; Carroll County Townships of Washington, Savanna, Woodland, Mount Carroll, Freedom, Salem, Cherry Grove-Shannon, and Rock Creek-Lima.
- C) Planning Area B-3: Whiteside County; Lee County Townships of Palmyra, Nelson, Harmon, Hamilton, Dixon, South Dixon, Marion, East Grove, Nachusa, China, Amboy, May, Ashton, Bradford, Lee Center, and Sublette; Carroll County Townships of York, Fairhaven, Wysox, and Elkhorn Grove; Ogle County Townships of Eagle Point, Buffalo, Pine Creek, Woosung, Grand Detour, Oregon, Nashua, Taylor, Pine Rock, and Lafayette.
- D) Planning Area B-4: Lee County Townships of Reynolds, Alto, Viola, Willow Creek, Brooklyn, and Wyoming; DeKalb County Townships of Paw Paw, Victor, Somonauk, Sandwich, Shabbona, Clinton, Squaw Grove, Milan, Afton, Pierce, Malta, DeKalb, Cortland, Mayfield, South Grove and Sycamore; Ogle County Townships of Flagg and Dement.
- 3) Region C (comprised of HSAs 2 and 10)
- A) Planning Area C-1: Woodford, Peoria, Tazewell, and Marshall Counties; Stark County Townships of Goshen, Toulon, Penn, West Jersey, Valley, and Essex.
- B) Planning Area C-2: LaSalle, Bureau, and Putnam Counties; Stark County Townships of Elmira and Oscola.
- C) Planning Area C-3: Henderson, Warren, and Knox Counties.
- D) Planning Area C-4: McDonough and Fulton Counties.
- E) Planning Area C-5: Rock Island, Henry, and Mercer Counties
- 4) Region D (comprised of HSA 4)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- A) Planning Area D-1: Champaign, Douglas, and Piatt Counties; Ford County Townships of Lyman, Sullivant, Peach Orchard, Wall, Drummer, Dix, Patton, and Button; Iroquois County Townships of Loda, Pigeon Grove, and Artesia.
- B) Planning Area D-2: Livingston and McLean Counties; Ford County Townships of Rogers, Mona, Pella, and Brenton.
- C) Planning Area D-3: Vermillion Vermillion County; Iroquois County Townships of Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, Beaver, Danforth, Douglas, Iroquois, Crescent, Middleport, Belmont, Concord, Sheldon, Ash Grove, Milford, Stockland, Fountain Creek, Lovejoy, Prairie Green, Onarga, and Ridgeland.
- D) Planning Area D-4: Dewitt, Macon, Moultrie, and Shelby Counties.
- E) Planning Area D-5: Coles, Cumberland, Clark, and Edgar Counties
- 5) Region E (comprised of HSA 3)
- A) Planning Area E-1: Logan, Menard, Mason, Sangamon, Christian and Cass Counties; Brown County Townships of Ripley, Cooperstown, and Versailles; Schuyler County Townships of Littleton, Oakland, Buena Vista, Rushville, Browning, Hickory, Woodstock, Bainbridge, and Frederick.
- B) Planning Area E-2: Macoupin and Montgomery Counties.
- C) Planning Area E-3: Greene, Jersey, and Calhoun Counties.
- D) Planning Area E-4: Pike, Scott, and Morgan Counties.
- E) Planning Area E-5: Adams and Hancock Counties; Schuyler County Townships of Birmingham, Brooklyn, Camden, and Huntsville; Brown County Townships of Pea Ridge, Missouri, Lee, Mount Sterling, Buckhorn, and Elkhorn.
- 6) Region F (comprised of HSAs 5 and 11)
- A) Planning Area F-1: Madison and St. Clair Counties; Monroe County Precincts 2, 3, 4, 5, 7, 10, 11, 14, 16, 17, 18, 19, 21, and 22; Clinton County Townships of Sugar Creek, Looking Glass, Germantown, Breese, St. Rose, Wheatfield, Wade, Sante Fe, Lake, Irishtown, Carlyle, and Clement.
- B) Planning Area F-2: Bond, Fayette, and Effingham Counties; Clay County Townships of Blair, Bible Grove, and Larkinsburg; Jasper County Townships of Grove, North Muddy, South Muddy, Smallwood, Wade, and Crooked Creek.
- C) Planning Area F-3: Crawford, Lawrence, Richland, Wabash, and Edwards Counties; Jasper County Townships of Hunt City, Willow Hill, Ste. Marie, Fox, and Grandville; Clay County Townships of Louisville, Songer, Xenia, Oskaloosa, Hoosier, Harter, Stanford, Pixley, and Clay City; Wayne County Townships of Orchard, Keith, Garden Hill, Berry, Bedford, Lamard, Indian Prairie, Zif, Elm River, Jasper, Mount Erie, Massillon, Leech, Barnhill, and Grover.
- D) Planning Area F-4: Marion, Jefferson, and Washington

HEALTH FACILITIES PLANNING BOARD

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

NOTICE OF PROPOSED AMENDMENT

- 2) multiplying each age specific base use rate by the projected population of the age group to obtain projected patient days;
- 3) adding the projected days of the age groups to obtain total projected patient days;
- 4) subtracting the number of patients entering the planning area for service from the total out-migration to obtain a net patient migration total.*

- E) Planning Area F-5: Hamilton, White, Gallatin, Hardin, and Saline Counties; Pope County Townships of Eddyville #6 and Golconda #2.
- F) Planning Area F-6: Franklin, Williamson, Johnson, and Massac Counties; Pope County Townships of Jefferson #4, Webster #5, Golconda #1, and Golconda #3,
- G) Planning Area F-7: Randolph, Perry, Jackson, Union, Alexander, and Pulaski Counties; Monroe County Precincts 1, 6, 8, 9, 12, 13, 15, 20 and 23.

AGENCY NOTE: *Patient migration adjustment is for a one year period and the base year shall be the date of the latest available patient origin data.

- 5) multiplying the net patient migration total by State state average length of stay for service to obtain migration patient days;
- 6) multiplying the migration patient days by .15 (15%) adjustment factor to obtain patient day adjustment;
- 7) when the area is a: add-patient-day-adjustment, when-area-is-a A) net out-migration area, adding patient day adjustment to projected patient days; or B) subtract-patient-day-adjustment, when-area-is-a net in-migration area, subtracting patient day adjustment from projected patient days;
- 8) dividing total migration adjusted patient days by days in year to obtain projected average daily census;
- 9) dividing the projected average daily census by the occupancy target for new construction for the service to obtain the bed need;
- 10) calculating the number of beds which should be added in each area by subtracting the number of beds in existing facilities from the number of beds needed.

- b) Age Groups: Medical-Surgical - 15 and over; Pediatrics: 0-14
- c) Occupancy Targets:
- 1) Occupancy Targets for "Modernization".
- | | 1-25 beds | 26-99 beds | 100-199 beds | 200+ beds |
|---------------------|-----------|------------|--------------|-----------|
| A) Medical-Surgical | 60% | 75% | 85% | 88% |
| B) Pediatrics | 65% | 75% | | |

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.560 Acute Mental Illness Category Categories of Service

- a) Planning Areas:
- 1) For the Department of Human Services Mental-Health---and Developmental-Disabilities, the State of Illinois;
- 2) For persons other than the Department of Human Services Mental Health---and-Developmental-Disabilities, health service areas except for HSAs Areas-VI, and VII, VIII, and IX, which are further delineated as Planning Areas A-1 through A-14 having the same boundaries as medical-surgical planning areas A-1 through A-14, respectively in--the-inventory-of-Health-Care-Facilities--which-is-compiled-by-the-Department.
- b) Age Groups: Children/Adolescents (Ages 0-17); Adults (Ages 18 and Over)

- d) Bed Capacity
- 1) Medical-Surgical bed capacity is the lesser of measured bed capacity or functional bed capacity per individual room.
- 2) Pediatrics bed capacity is the lesser of measured bed capacity or functional bed capacity per individual room in units of less than 16 beds which are not distinct pediatric units. In pediatric units--one having its own nursing station--the reported functional capacity is utilized.
- e) Total Bed Need for Medical-Surgical (M-S) and Pediatrics and the number of additional beds needed are determined by planning area as follows:
- 1) dividing the three year average of experienced patient days for each of three age groups (0-14, 15-64 and 65+) by the base year population for each age group resulting in age specific base use

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- c) Occupancy Target: 85%
- d) Bed Capacity: Acute Mental Illness bed capacity for facilities not operated by the Department of Human Services Mental-Health-and-Developmental-Disabilities is the lesser of measured bed capacity or functional bed capacity per individual room. For facilities operated by the Department of Human Services Mental-Health-and-Developmental-Disabilities, all mental illness beds are counted as chronic beds. State facilities can provide acute mental illness care but for purposes of review only the service not the beds are recognized as acute.
- e) Total Bed Need Determination for acute mental illness beds not and the number-of-additional-beds-needed-for-Acute-Mental-illness-in-the private-sector-is-for-facilities-other-than-those operated by the Department of Human Services Mental-Health-and-Developmental-Disabilities) is determined as follows by:
- 1) A bed need of 1174 beds per 1,000 projected population is established in each planning area as the minimum bed need baseline.
 - 2) Calculate a state-facility-bed-usage-per-17000-population-by dividing the total-number-of-state-beds-utilized-for-Acute-Mental-illness-(AMI)-service-by-the-state-population-in-thousands.
 - 2)3) Calculate the planning area's experienced use rate by dividing the number of patient days in the base year by the base year population in thousands. Multiply the experienced use rate by the projected population in thousands to obtain estimated patient days. Divide the estimated patient days by 365 to determine the estimated average daily census (ADC). Divide the estimated ADC by .85 (occupancy factor) to obtain an estimated bed need in the Substate-in-each planning area the-calculated-state-facility-bed-usage-per-17000-population-from-the-14-per-17000-population baseline-to-obtain-an-adjusted-bed-need-rate.
 - 3)4) When the estimated bed need is less than the minimum bed need, the minimum bed need is the projected bed need. When the estimated bed need is greater than the minimum bed need, the estimated bed need is the projected bed need. Calculate an-AMI-adjustment-factor-by-dividing-private-sector-AMI-admissions-by the-combined-total-private-sector-AMI-and-Substance-Abuse admissions.
 - 5) Multiply the-adjusted-bed-need-rate-(step-3)-by-the-AMI-adjustment-factor-(step-4)-to-obtain-a-service-adjusted-bed-need rate.
 - 6) Divide the-adjusted-bed-need-rate-from-step-5-by-an-occupancy target-of-85-(85%) then-multiply-the-occupancy-adjusted-rate-by the-projected-area-population-in-thousands-to-arrive-at-the initial-bed-need.
 - 7) Adjust-the-planning-area-bed-need-for-migration:
- A) determine-the-number-of-patients-entering-the-planning-area and-the-number-of-area-residents-leaving-the-planning-area

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- for-acute-mental-illness-service;
- B) multiply-the-total-number-of-patients-entering-the-planning area-by-20-to-obtain-in-migration-days-of-care;
- C) multiply-the-total-number-of-patients-leaving-the-planning area-by-20-to-obtain-out-migration-days-of-care;
- B) multiply-both-the-in-migration-and-out-migration-days-of-care-totals-by-a-.05-(5%)-adjustment-factor;
- E) subtract-the-smaller-adjusted-migration-days-of-care-total-to determine-the-net-patient-day-migration-total--if--the out-migration-is--largest--the-area-is-a-net-out-migration area-while-the-reverse-is-true-if-in-migration-days-is--the larger-figure--)*
- AGENCY--NOFB--Patient-migration-adjustment-is-for-a-one year-period-and-the-base-year--shall-be--the-date--of--the latest-available-patient-origin-data.
- F) divide--the-net-in-or-out-patient-day-migration-total-by-365 to-determine-the-average-daily-census-for-migration;
- G) in-the-case-of-a-net-in-migration-add--the-average-daily census--for--migration--to--the-initial-bed-need--(step-6)--in the-case-of-a-net-out-migration--subtract--the-average-daily census--for--migration--from--the-initial-bed-need--to-obtain--the calculated-number-of-beds-needed;
- 4)9) Calculate the number of additional beds needed in each area by subtracting the number of existing beds in--private--sector facilities from the projected bed need calculated-number-of--beds needed.
- F) No bed need formula bed-need for State-operated facilities operated by the Department of Human Services has been developed. It is the responsibility of the applicant to document the need for a project by complying with the Review Criteria contained in 77 Ill. Adm. Code 11107-Subpart-1.
- (Source: Amended at 22 Ill. Reg. _____, effective _____)
- Section 1100.570 Substance Abuse/Addiction Treatment Category of Service
- a) Planning Areas: Health Service Areas
 - b) Age Groups: all ages
 - c) Occupancy Target: 90%
 - d) Bed Capacity: Substance Abuse/Addiction Treatment bed capacity is the lesser of measured bed capacity or functional bed capacity per individual bedroom.
 - e) Bed Need Determination-Substance Abuse/Addiction Treatment:- No formula bed need for substance abuse has been developed. It is the responsibility of the applicant to document the number of beds needed in any proposed project by complying with the Review Criteria

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

contained in 77 Ill. Adm. Code 1110--Subpart-I.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.580 Neonatal Intensive Care Category of Service

a) Planning Areas:

HSA	1	HSA's	5 and 11
HSA's	2 and 10	HSA's	6, 7, 8, and 9
HSA's	3 and 4		

b) Occupancy Targets: 75%

c) Bed Capacity: Neonatal Intensive Care bed capacity is the reported functional capacity per patient room.

d) Bed Need Determination-Neonatal Intensive Care:

No formula bed need for neonatal intensive care beds has been developed. It is the responsibility of the applicant to document the need for the number of neonatal intensive beds proposed by complying with the Review Criteria contained in 77 Ill. Adm. Code 1110--Subpart I.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.590 Burn Treatment Category of Service

a) Planning Area Areas: The State of Illinois

HSA	1	HSA's	5-and-11
HSA's	2-and-10	HSA's	6,7,787-and-9
HSA's	3-and-4		

b) Age Groups: All ages

c) Occupancy Target: 60%

d) Bed Capacity: Burn treatment bed capacity is the reported functional capacity of the burn unit.

e) Burn Incidence:

A standard estimate is that annually one in every 10,000 57203 persons will have a burn accident requiring hospitalization and treatment in a burn treatment care center/unit. The number of burn victims requiring hospitalization can be determined by calculating the number of annual burn admissions within the State by planning area.

f) Total Bed Need Determination and the number of additional beds needed for burn treatment care are determined as follows by:

- 1) Calculate calculating the number of expected annual burn treatment patients requiring hospitalization care by dividing the projected planning area population by 10,000 57203.

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

2) Calculate the calculating projected patient days by multiplying the number of annual burn treatment patients by 13 40 days (average length of stay).

3) Calculate the projected calculating average daily census by dividing the projected patient days by 365.

4) Calculate calculating the number of burn treatment center/unit beds needed by dividing divide the projected average daily census by .60 80 optimum-occupancy-factor-of-00%.

5) Calculate calculating the number of burn treatment beds that which should be added in the planning each area by subtracting the number of beds in existing facilities from the number of beds needed.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.600 Therapeutic Radiology Equipment (Repealed)

a) Planning Areas:

Planning-area-boundaries-are-established-and-are-coterminous-with-HSA boundaries-except-for-the-Chicago-metropolitan-area-where-HSA's-677-87 and-9-are-combined-into-one-service-area--These--areas--are--combined because--of--the--high--number--of--patients--receiving--radiation--therapy service--across--HSA--boundaries--The--State--Board--encourages--the arewide-health-planning-organizations--in--the--Chicago-metropolitan area--to--coordinate--efforts--to--develop--a--proper--distribution-of radiology-equipment-and-services-throughout-the-area

b) Classification of Equipment:

The--following--classes--are--established--for--equipment--used---in therapeutic-radiology:

1) Class---A---High---Energy---Megavoltage---(MEV)---includes---linear accelerators---betatrons---and---related---equipment---capable---of producing---x-rays---electrons---photons---or---neutrons---with---maximum energies---in---excess---of---25-MeV.

2) Class-B-Medium-Energy-Megavoltage---includes---linear---accelerators and---supporting---or---related---equipment---capable---of---producing---x-rays and---electrons---and---maximum---energies---of---0-25-MeV.

3) Class-C-Low-Energy-Megavoltage---includes---linear---accelerators---Van de-Graaff-generators---Cobalt-60---Cesium-and-equivalent-equipment capable---of---producing---x-ray---or---gamma-rays---with---maximum---energies---of 600-KeV-6-MeV.

c) Utilization Standards:

Annual-treatment-courses-of-300-per-piece-of-equipment-minimum-

d) Need-Assessment---External-Beam-Therapy/Telettherapy---The-need---for megavoltage---equipment---(Classes---A---B---and---C)---is---determined---on-a planning-area-basis---as---follows:

- 1) Project-the-area's-population--based-upon--the--latest--Illinois Bureau-of-the-Budget-projections-officially-published-

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 2) Project--the--incidence--of--cancer--for--the--area--by--multiplying--the--projected--population--by--the--area's--age--specific--incidence--rates--
- 3) Project--the--number--of--patients--needing--therapeutic--radiology--by--multiplying--the--area's--cancer--incidence--by--60%--
- 4) Project--the--number--of--megavoltage--units--required--by--dividing--the--projected--number--of--patients--by--300--
- 5) Adjustment--to--the--number--of--needed--megavoltage--units--will--be--allowed--by--the--State--Board--based--upon--patient--flow--across--state--lines--in--such--instances--the--area-wide--health--planning--organization--must--conduct--a--study--of--the--situation--and--determine--the--need--for--megavoltage--equipment--existing--resources--available--and--develop--a--detailed--recommendation--for--distribution--of--such--equipment--The--Agency--shall--adjust--the--need--determination--when--the--study--indicates--that--there--is--an--impact--on--the--need--as--calculated--by--the--Agency--

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1100.630 Chronic Renal Dialysis Category of Service

- a) Planning Areas: Health Service Areas

- b) Utilization Standards:

Renal Dialysis Centers or facilities must operate at a minimum of 80 percent utilization rate, assuming three patient shifts per day per renal dialysis station operating six days a week.

- c) Need Determination-Chronic Renal Dialysis:

The chronic renal dialysis or end stage renal disease (ESRD) station need is a five-two-year projection from the base year. The need for additional treatment stations can be estimated utilizing the following methodology:

- 1) Establish a minimum institutional dialysis rate by dividing the total number of institutional dialysis patients in the base year by the State base year population in thousands and multiply the result by .6 (60%). Determine the patient-population-receiving dialysis-services-in-the-base-year.
- 2) Determine each planning area's experienced institutional dialysis rate by dividing the number of patients receiving dialysis in the base year by the planning area population in thousands for the base year the-number-of--new--patients-who-will-need-dialysis-services-by-adding-a-net-increase-of-56-new-patients-per-million population-annually.
- 3) Multiply each planning area's projected population in thousands by the greater of the minimum institutional dialysis rate or the experienced institutional dialysis rate for the planning area to determine the estimated number of institutional dialysis patients Add--the--number--of--patients--currently--in--dialysis--(Step--(1))--to--the--number--of--new--patients--expected--(Step--(2))--to--determine

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- maximum-projected-population-volume.
- 4) Multiply the planning area's estimated number of institutional dialysis patients by a factor of 1.33 (estimated five year increase in prevalence) to determine the projected number of institutional dialysis patients in the planning area for the projected year Adjust--the--maximum--projected--population--volume--by--subtracting--a--10%--annual--attrition--rate--due--to--death--and--successful--transplantation.
- 5) Multiply the projected number of institutional dialysis patients by 156 to determine the projected number of institutional procedures Adjust--the--projected--patient--volume--determined--in--Step--(4)--downward--by--subtracting--a--projected--number--of--patients--who--will--receive--home--dialysis--This--projection--is--based--on--the--percentage--of--patients--receiving--home--dialysis--within--the--planning--area--in--the--base--year--when--that--percentage--exceeds--12-4%--When--the--percentage--falls--below--12-4%--a--minimum--percentage--of--12-4%--will--be--applied.
- 6) Divide the projected number of institutional procedures by 750 to determine the projected number of stations needed for the projected year Utilizing--the--adjusted--projected--patient--volume--determined--in--Step--(5)--determine--the--total--number--of--estimated--institutional--procedures--per--year--by--multiplying--the--projected--patient--volume--from--Step--(5)--by--an--average--number--of--procedures--per--patient--per--year--(156)--This--utilization--rate--is--based--on--a--3--times--weekly--treatment--schedule.
- 7) Determine--the--number--of--dialysis--stations--needed--by--dividing--the--number--of--estimated--procedures--per--year--(Step--(6))--by--a--recommended--average--procedures--per--year--of--750--which--is--based--on--an--optimal--80%--utilization--rate.
- 7)8) Subtract the number of existing stations from the projected number of needed stations to determine the excess or need for additional stations needed in-the-area.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.660 General Long-Term Care-Nursing Care Category of Service

("General Long-Term Care" is defined in 77 Ill. Adm. Code 1110.1720(a)).

- a) Planning Areas: 95 areas in 11 HSAs

- 1) HSA 1: Planning areas are Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago Counties.
- 2) HSA 2: Planning areas are Bureau/Putnam Counties (combined), Henderson/Warren Counties (combined), Marshall/Stark Counties (combined), Fulton, Knox, LaSalle, McDonough, Peoria, Tazewell, and Woodford Counties.
- 3) HSA 3: Planning areas are Brown/Schuyler Counties (combined), Calhoun/Pike Counties (combined), Morgan/Scott Counties

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- (combined), Adams, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, and Sangamon Counties.
- 4) HSA 4: Planning areas are Coles/Cumberland Counties (combined), Champaign, Clark, DeWitt, Douglas, Edgar, Ford, Iroquois, Livingston, McLean, Macon, Moultrie, Piatt, Shelby, and Vermilion Counties.
- 5) HSA 5: Planning areas are Alexander/Pulaski Counties (combined), Edwards/Wabash Counties (combined), Gallatin/Hamilton/Saline Counties (combined), Johnson/Massac Counties (combined), Hardin/Pope Counties (combined), Bond, Clay, Crawford, Effingham, Fayette, Franklin, Jackson, Jasper, Jefferson, Lawrence, Marion, Perry, Randolph, Richland, Union, Washington, Wayne, White, and Williamson Counties.
- 6) HSA 6: Planning Areas
- A) 6A: City of Chicago Community Areas Rogers Park, West Ridge, Uptown, Lincoln Square, Edgewater, Edison Park, Norwood Park, Jefferson Park, Forest Glen, North Park, Albany Park, Portage Park, Irving Park and Avondale.
- B) 6B: City of Chicago Community Areas North Center, Lakeview, Lincoln Park, Near North Side, Loop, Logan Square, West Town, Near West Side, Lower West Side, West Garfield Park, East Garfield Park, North Lawndale, South Lawndale, O'Hare, Dunning, Montclare, Belmont Cragin, Hermosa, Humboldt Park, and Austin.
- C) 6C: City of Chicago Community Areas Near North Side, Armour Square, Douglas, Oakland, Fuller Park, Grand Boulevard, Kenwood, Washington Park, Hyde Park, Woodlawn, South Shore, Chatham, Avalon Park, South Chicago, Burnside, Calumet Heights, Roseland, Pullman, South Deering, East Side, West Pullman, Riverdale, Hegewisch, Garfield Ridge, Archer Heights, Brighton Park, McKinley Park, Bridgeport, New City, West Elson, Gage Park, Clearing, West Lawn, Chicago Lawn, West Englewood, Englewood, Greater Grand Crossing, Ashburn, Auburn Gresham, Beverly, Washington Heights, Mount Greenwood, and Morgan Park.
- 7) HSA 7: Planning Areas
- A) 7A: Cook County Townships of Barrington, Palatine, Wheeling, Hanover, Schaumburg, and Elk Grove.
- B) 7B: Cook County Townships of Northfield, New Trier, Evanston, Niles, and Maine.
- C) 7C: DuPage County.
- D) 7D: Cook County Townships of Norwood Park, Leyden, Proviso, River Forest, Oak Park, Riverside, Berwyn, and Cicero.
- E) 7E: Cook County Townships of Lyons, Lemont, Palos, Orland, Stickney, Worth, Calumet, Bremen, Thornton, Rich, and Bloom.
- 8) HSA 8: Planning areas are Kane, Lake, and McHenry Counties.
- 9) HSA 9: Planning areas are Grundy, Kankakee, Kendall, and Will

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- Counties.
- 10) HSA 10: Planning areas are Henry, Mercer, and Rock Island Counties.
- 11) HSA 11: Planning areas are Clinton, Madison, Monroe, and St. Clair Counties.
- a) Age Groups: 0-64, 65-74 and 75 and over
- b) Occupancy Targets: Modernization 85%; Additional Beds 90%
- c) Need Determination:
- d) Bed need for the Nursing in the General-Long-Term Care Classification of Facilities is calculated only for the Nursing Category of Service which includes the skilled nursing and/or the intermediate nursing levels of care.
- e) No formula bed need for the sheltered care category of service has been developed. It is the responsibility of the applicant to document the number of beds needed in any proposed project by complying with the Review Criteria contained in 77-III-Adm-Code 11187-Subpart-f.
- f) Minimum Use Rate:
- 1) Determine the overall health service area use rates by age group (0-64, 65-74 and 75 and over) by dividing the patient days for each age group by the area population for that age group.
- 2) Establish a minimum use rate for each age group by multiplying the HSA use rate for age group by .6 (60%).
- g) Maximum Use Rate:
- 1) Determine the overall HSA use rates by age group (0-64, 65-74 and 75 and over) by dividing the patient days in each age group by the area population for that age group.
- 2) Establish a maximum use rate for each age group by multiplying the HSA use rate for that age group by 1.6 (160%).
- h) Formula or Planning Use Rate:
- 1) Each planning area's experienced use rate is then calculated for each of the age groups by dividing the total number of patient days attributed to an age group (in all area facilities) by the current planning area population within the same age group (expressed in thousands).
- 2) The experienced use rates established by planning area, the HSA maximum use rates (by age group) and the HSA minimum use rates (by age group) are multiplied by the projected age group populations for the HSA.
- 3) The results of the "experienced use rate calculations" and the "HSA minimum and maximum use rate calculations" for each age group are compared. The experienced use rate is utilized in the formula if it is between the minimum and maximum totals in each age group. If the experienced use rate exceeds the maximum, the maximum rate for that age group is utilized. If it falls below the minimum, the minimum use rate for that age group is utilized in the need projection.
- h) Bed Capacity: Skilled and intermediate and sheltered long-term care

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

bed capacity is the licensed bed capacity for the service.

- i) Total Bed Need and the number of additional beds needed for care are determined by:

- 1) Multiplying the formula or planned use rate for each age group by the planning areas projected population (in thousands) for each age group to obtain the projected or planned patient days for each age group for that area;
- 2) The three age group projections are summed to reflect "total area projected patient days";
- 3) Dividing the projected patient days by 365 (days) to obtain the projected average daily census;
- 4) Dividing the projected average daily census by the .9 (90%) occupancy factor to obtain the number of beds needed; and
- 5) Subtracting the number of existing beds in the area from the number of beds needed to determine additional beds needed or the excess number of beds existing.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.661 General Long-Term Care-Sheltered Care Category of Service

- a) Planning Areas: For purposes of need assessment, the applicant shall identify the planning or geographic service area pursuant to the review criteria requirements of 77 Ill. Adm. Code 1110. For inventory purposes, sheltered care facilities and beds shall be inventoried in accordance with the planning areas established for the nursing care category of service in this Part.
- b) Age Group: 75 and over.
- c) Occupancy Targets: 85% for additional beds and for modernization.
- d) Need Determination: No formula or bed need for the sheltered care category of service has been established. The applicant must document that the number of beds to be added or modernized is needed pursuant to the review criteria of 77 Ill. Adm. Code 1110.
- e) Bed Capacity: Sheltered care capacity is the number of sheltered care beds licensed by the Agency.

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 1100.680 Intraoperative Magnetic Resonance Imaging Category of Service

- a) Planning Area Areas: The State of Illinois Health--Service--Areas--as defined--by--the--Department--of-Health-and-Human-Services--pursuant-to PrBr-93-641.
- b) Need Assessment: The State Board has determined that eight Intraoperative Magnetic Resonance Imaging machines are needed in the State One-piece-of-equipment-per-47500-Computerized-Tomographic-scans.

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1100.710 Extracorporeal Shock Wave Lithotripsy (Repealed)

- a) Planning Area:--The State-of-Illinois--
- b) Need--Assessment:--One-piece-of-kidney-stone-lithotripsy-equipment-for each-57000-potential-candidates--(The-State-Board-has-determined-that-6 pieces-of-kidney-stone-lithotripsy-equipment-are-sufficient--to-meet the-needs-of-the-Illinois-population--)
- c) Need--Assessment:--One-piece-of-gallstones--lithotripsy-equipment-is needed-in-the-state--

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1100.720 Selected Organ Transplantation

- a) Planning Area - The State of Illinois
- b) Need Determination: No formula need has been developed for this category of service. It is the responsibility of the applicant to document the need for the service by complying with all applicable Review Criteria contained in 77 Ill. Adm. Code 11107-Subpart-1.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Processing, Classification Policies and Review Criteria

2) Code Citation: 77 Ill. Adm. Code 1110

3) Section Numbers: Proposed Action:

1110.40	Amendment
1110.60	Amendment
1110.110	Amendment
1110.120	Amendment
1110.130	Amendment
1110.210	Amendment
1110.230	Amendment
1110.235	Amendment
1110.240	Amendment
1110.420	Amendment
1110.520	Amendment
1110.720	Amendment
1110.730	Amendment
1110.810	Amendment
1110.820	Amendment
1110.830	Amendment
1110.920	Amendment
1110.930	Amendment
1110.1010	Amendment
1110.1020	Amendment
1110.1110	Repeal
1110.1120	Repeal
1110.1130	Repeal
1110.1420	Amendment
1110.1430	Amendment
1110.1520	Amendment
1110.1530	Amendment
1110.1540	Amendment
1110.1720	Amendment
1110.1730	Amendment
1110.1820	Amendment
1110.1830	Amendment
1110.1910	Amendment
1110.1920	Amendment
1110.1930	Amendment
1110.2130	Amendment
1110.2210	Repeal
1110.2220	Repeal
1110.2230	Repeal
1110.2320	Repeal
1110.2330	Repeal
1110.2510	Amendment

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

1110.2610
1110.APPENDIX B
Amendment
Amendment

4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]

5) A Complete Description of the Subjects and Issues Involved: Changes to Part 1110 are proposed in the following areas: non-substantive review criterion, discontinuation of services and/or healthcare facilities, general review criterion, and changes of ownership review criterion. Additionally, changes are proposed regarding planning area configuration, station and/or bed need methodology, and review criterion in the following categories of service: Acute Mental Illness, Burn Treatment, and Chronic Renal Dialysis. Also, the Health Facilities Planning Board is proposing the repeal of the following categories of service: Therapeutic Radiology Equipment and Extracorporeal Shockwave Lithotripsy. New provisions and review criterion are proposed for the Non-Hospital Based Ambulatory Surgery, General Long-Term Care and Intraoperative Magnetic Resonance Imaging Categories of Service.

6) Will this rulemaking replace any emergency rulemaking currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: The purpose of the Illinois Health Facilities Planning Act (Planning Act) is to establish a procedure designed to contain health care costs by preventing unnecessary construction or modification of health care facilities. The proposed amendments and new Section to Part 1100 will promote the statute's purpose of improving the "ability of the public to obtain necessary health services" and "establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public" by assuring that proposed transactions are reviewed in contrast with emerging trends and technological advancements in the healthcare field.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Donald Jones
Health Facilities Planning Board
Illinois Department of Public Health

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Division of Facilities Development
525 West Jefferson, Second Floor
Springfield, Illinois 62761
217/782-3516

All written comments received within 45 days after this issue of the *Illinois Register* will be considered.

A public hearing will be on Wednesday, June 24, 1998, at 1:30 p.m. at the Executive Plaza Hotel, 71 East Wacker Driver, Chicago, Illinois. The hearing will be for the sole purpose of gathering public comment on the proposed amendments. Persons interested in presenting testimony at this hearing are advised that the State Board will follow these procedures in the conduct of the hearing:

- 1) Each person presenting oral testimony is requested to provide to the State Board a written (preferably typed) copy of such testimony at the time the oral testimony is presented.
 - 2) No person will be recognized to speak for a second time until all persons wishing to testify have done so. The State Board may limit the time the hearing is open and limit the time of individual testimony based upon the number of persons wishing to testify. All testimony shall conclude at the specific times except that an individual in the midst of presenting testimony shall be allowed to complete his/her testimony.
 - 3) In order to provide for a balanced presentation of views and to facilitate the orderly conduct of the hearing, the State Board may impose such other rules of procedure, including the order of call of witnesses, as necessary.
- These rules may have an impact of small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Donald Jones at the above address.
- Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Health care facilities that meet the definition of small businesses.
- B) Reporting, bookkeeping or other procedures required for compliance:

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

None

- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998
The full text of the Proposed Amendments begins on the next page:

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER II: HEALTH FACILITIES
PLANNING BOARD
SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1110

PROCESSING, CLASSIFICATION POLICIES AND REVIEW CRITERIA

SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section
1110.10 Introduction to Part 1110
1110.20 Projects Required to Obtain a Permit (Repealed)
1110.30 Processing and Reviewing Applications
1110.40 Classification of Projects
1110.50 Recognition of Services Which Existed Prior to Permit Requirements
1110.55 Recognition of Non-Hospital Based Ambulatory Surgery Category of Service
1110.60 Master Design Projects

SUBPART B: REVIEW CRITERIA--DISCONTINUATION

Section
1110.110 Introduction
1110.120 Discontinuation--Definition
1110.130 Discontinuation--Review Criteria

SUBPART C: GENERAL, MASTER DESIGN, AND CHANGES OF OWNERSHIP REVIEW CRITERIA

APPLICABLE TO ALL PROJECTS OTHER THAN DISCONTINUATION

Section
1110.210 Introduction
1110.220 Definitions--General Review Criteria
1110.230 General Review Criteria
1110.235 Additional General Review Criteria for Master Design and Related Projects Only
1110.240 Changes of Ownership Mergers, Consolidations and Acquisitions

SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS INVOLVING ESTABLISHMENT OF ADDITIONAL BEDS OR SUBSTANTIAL CHANGE IN BED CAPACITY

Section
1110.310 Introduction
1110.320 Bed Related Review Criteria

SUBPART E: MODERNIZATION REVIEW CRITERIA

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Section
1110.410 Introduction
1110.420 Modernization Review Criteria

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA--MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section
1110.510 Introduction
1110.520 Medical/Surgical, Obstetric, Pediatric and Intensive Care--Definitions
1110.530 Medical/Surgical, Obstetric, Pediatric and Intensive Care--Review Criteria

SUBPART G: CATEGORY OF SERVICE REVIEW CRITERIA--COMPREHENSIVE PHYSICAL REHABILITATION

Section
1110.610 Introduction
1110.620 Comprehensive Physical Rehabilitation--Definitions
1110.630 Comprehensive Physical Rehabilitation--Review Criteria

SUBPART H: CATEGORY OF SERVICE REVIEW CRITERIA--ACUTE MENTAL ILLNESS

Section
1110.710 Introduction
1110.720 Acute Mental Illness--Definitions
1110.730 Acute Mental Illness--Review Criteria

SUBPART I: CATEGORY OF SERVICE REVIEW s; ABUSE/ADDICTION TREATMENT

Section
1110.810 Introduction
1110.820 Substance Abuse/Addiction Treatment--Definitions
1110.830 Substance Abuse/Addiction Treatment--Review Criteria

SUBPART J: CATEGORY OF SERVICE REVIEW CRITERIA--NEONATAL INTENSIVE CARE

Section
1110.910 Introduction
1110.920 Neonatal Intensive Care--Definitions
1110.930 Neonatal Intensive Care--Review Criteria

SUBPART K: CATEGORY OF SERVICE REVIEW CRITERIA--BURN TREATMENT

Section

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

1110.11010 Introduction
1110.11020 Burn Treatment--Definitions
1110.11030 Burn Treatment--Review Criteria

SUBPART L: CATEGORY OF SERVICE REVIEW CRITERIA--
THERAPEUTIC RADIOLOGY

Section
1110.11110 Introduction (Repealed)
1110.11120 Therapeutic Radiology--Definitions (Repealed)
1110.11130 Therapeutic Radiology--Review Criteria (Repealed)

SUBPART M: CATEGORY OF SERVICE REVIEW CRITERIA--
OPEN HEART SURGERY

Section
1110.1210 Introduction
1110.1220 Open Heart Surgery--Definitions
1110.1230 Open Heart Surgery--Review Criteria

SUBPART N: CATEGORY OF SERVICE REVIEW CRITERIA--CARDIAC
CATHETERIZATION

Section
1110.1310 Introduction
1110.1320 Cardiac Catheterization--Definitions
1110.1330 Cardiac Catheterization--Review Criteria

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA--CHRONIC RENAL DIALYSIS

Section
1110.1410 Introduction
1110.1420 Chronic Renal Dialysis--Definitions
1110.1430 Chronic Renal Dialysis--Review Criteria

SUBPART P: CATEGORY OF SERVICE REVIEW CRITERIA--NON-HOSPITAL
BASED AMBULATORY SURGERY

Section
1110.1510 Introduction
1110.1520 Non-Hospital Based Ambulatory Surgery--Definitions
1110.1530 Non-Hospital Based Ambulatory Surgery--Projects Not Subject to This
Part
1110.1540 Non-Hospital Based Ambulatory Surgery--Review Criteria

SUBPART Q: CATEGORY OF SERVICE REVIEW CRITERIA--COMPUTER SYSTEMS

Section

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

1110.1610 Introduction (Repealed)
1110.1620 Computer Systems--Definitions (Repealed)
1110.1630 Computer Systems--Review Criteria (Repealed)

SUBPART R: CATEGORY OF SERVICE REVIEW CRITERIA--GENERAL
LONG-TERM CARE

Section
1110.1710 Introduction
1110.1720 General Long-Term Care--Definitions
1110.1730 General Long-Term Care--Review Criteria

SUBPART S: CATEGORY OF SERVICE REVIEW CRITERIA--SPECIALIZED
LONG-TERM CARE

Section
1110.1810 Introduction
1110.1820 Specialized Long-Term Care--Definitions
1110.1830 Specialized Long-Term Care--Review Criteria

SUBPART T: CATEGORY OF SERVICE REVIEW CRITERIA--
INTRAOPERATIVE MAGNETIC RESONANCE IMAGING

Section
1110.1910 Introduction
1110.1920 Intraoperative Magnetic Resonance Imaging--Definitions
1110.1930 Intraoperative Magnetic Resonance Imaging--Review Criteria

SUBPART U: CATEGORY OF SERVICE REVIEW CRITERIA--HIGH LINEAR
ENERGY TRANSFER (L.E.T.)

Section
1110.2010 Introduction
1110.2020 High Linear Energy Transfer (L.E.T.)--Definitions
1110.2030 High Linear Energy Transfer (L.E.T.)--Review Criteria

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA--POSITRON
EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section
1110.2110 Introduction
1110.2120 Positron Emission Tomographic Scanning (P.E.T.)--Definitions
1110.2130 Positron Emission Tomographic Scanning (P.E.T.)--Review Criteria

SUBPART W: CATEGORY OF SERVICE REVIEW CRITERIA--EXTRACORPOREAL
SHOCK WAVE LITHOTRIPSY

Section

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

1110.2210 Introduction (Repealed)
1110.2220 Extracorporeal Shock Wave Lithotripsy--Definitions (Repealed)
1110.2230 Extracorporeal Shock Wave Lithotripsy--Review Criteria (Repealed)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA--SELECTED
ORGAN TRANSPLANTATION

Section
1110.2310 Introduction
1110.2320 Selected Organ Transplantation--Definitions
1110.2330 Selected Organ Transplantation--Review Criteria

SUBPART Y: CATEGORY OF SERVICE REVIEW CRITERIA--KIDNEY TRANSPLANTATION

Section
1110.2410 Introduction
1110.2420 Kidney Transplantation--Definitions
1110.2430 Kidney Transplantation--Review Criteria

SUBPART Z: CATEGORY OF SERVICE REVIEW CRITERIA--SUBACUTE
CARE HOSPITAL MODEL

Section
1110.2510 Introduction
1110.2520 Subacute Care Hospital Model--Definitions
1110.2530 Subacute Care Hospital Model--Review Criteria
1110.2540 Subacute Care Hospital Model--State Board Review
1110.2550 Subacute Care Hospital Model--Project Completion

SUBPART AA: CATEGORY OF SERVICE REVIEW CRITERIA--POSTSURGICAL RECOVERY CARE
CENTER ALTERNATIVE HEALTH CARE MODEL

Section
1110.2610 Introduction
1110.2620 Postsurgical Recovery Care Center Alternative Health Care Model--Definitions
1110.2630 Postsurgical Recovery Care Center Alternative Health Care Model--Review Criteria
1110.2640 Postsurgical Recovery Care Center Alternative Health Care Model--State Board Review
1110.2650 Postsurgical Recovery Care Center Alternative Health Care Model--Project Completion

SUBPART AB: CATEGORY OF SERVICE REVIEW CRITERIA -
CHILDREN'S RESPITE CARE ALTERNATIVE HEALTH CARE MODEL

1110.2710 Introduction
1110.2720 Children's Respite Care Center Alternative Health Care

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Model - Definitions
1110.2730 Children's Respite Care Center Alternative Health Care Model - Review Criteria
1110.2740 Children's Respite Care Center Alternative Health Care Model - State Board Review
1110.2750 Children's Respite Care Center Alternative Health Care Model - Project Completion

APPENDIX A Medical Specialty Eligibility/Certification Boards
APPENDIX B State and National Norms on-Square-Footage-by-Department
APPENDIX C Statutory Citations for All State and Federal Laws and Regulations Referenced in Chapter 3

AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 18498; amended at 9 Ill. Reg. 3734, effective March 6, 1985; amended at 11 Ill. Reg. 7333, effective April 1, 1987; amended at 12 Ill. Reg. 16078, effective September 29, 1989; emergency amendments at 16 Ill. Reg. 13159, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 16 Ill. Reg. 16108, effective October 2, 1992; amended at 17 Ill. Reg. 4453, effective March 24, 1993; amended at 18 Ill. Reg. 2993, effective February 10, 1994; amended at 18 Ill. Reg. 8455, effective July 1, 1994; amended at 19 Ill. Reg. 2991, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 7981, effective May 31, 1995, for a maximum of 150 days; emergency expired October 27, 1995; emergency amendment at 19 Ill. Reg. 15273, effective October 20, 1995, for a maximum of 150 days; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2600; amended at 20 Ill. Reg. 4734, effective March 22, 1996; amended at 20 Ill. Reg. 14785, effective November 15, 1996; amended at 22 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section 1110.40 Classification of Projects

When an application for permit has been received by the State Board, the Executive Secretary shall classify the project into one of the following classifications:

a) Emergency Classification

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Emergency projects are subject to the review process and are those construction or modification projects that affect the inpatient operation of a health care facility and which are necessary because there exists one or more of the following conditions:
- A) An imminent threat to the structural integrity of the building; or
 - B) An imminent threat to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building.
- 2) Since the State Board recognizes that applications for emergency projects must be processed as expeditiously as possible, all applications will be reviewed in accordance with the following review criteria:
- A) the project is indeed an emergency project as defined in subsection subsections (a)(1)(A) or (B) above; and
 - B) failure to proceed immediately with the project would result in closure or impairment of the inpatient operation of the facility; and
 - C) the emergency conditions did not exist longer than 30 days prior to requesting the emergency classification.
- b) Non-Substantive Review Classification. Non-substantive projects are those establishment, construction, modification or equipment projects which consist solely of the characteristics detailed in this subsection. Applications shall be evaluated only against the following applicable review criteria of the Sections or Parts specified set forth below.

Applicable Project Type	Review Criteria
Establishment of long-term care facilities licensed by the Department of Children and Family Services	Section 1110.230 and Part 1120
Discontinuation of beds or category of service	Section 1110.130 and Part 1120
Changes of ownership	Sections 1110.230(b), 1110.240, and Part 1120
Long-term care for the Developmentally Disabled Categories of Service	Section 1110.230(a)-(b) and (c); Section 1110.320(b); Section 1110.1830(a)-(b) and (c); and Part 1120

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Acute Care Beds Certified for Extended Care Category of Service as Defined by the Health Care Financing Administration (42 CFR 405.471 (1987))	(b) and Part 1120; Section 1110.230(a), (b) and (c); (d); (e); (f); (g); and Part 1120
Chronic Renal Dialysis Category of Service	Section 1110.230(a)-(b); (c); (d); (e); (f); (g); and Part 1120
Residential units and apartments	Section 1110.230; (a); (b); (c); (d); (e); (f); (g); and Part 1120
Computers	Section 1110.230(c), (d) and (e); (f); (g); and Part 1120
Projects intended solely to provide care to patients suffering from Acquired Immunodeficiency Syndrome (AIDS) or related disorders such as AIDS Related Complex (ARC)	Section 1110.230; Section 1110.320; Section 1110.420; and Part 1120
Projects to comply with Life Safety Code requirements	Section 1110.230(c) and (e); and (f); Section 1110.420(a) and (b); and Part 1120
Parking Facilities	Section 1110.230(c); (d); (e); and (f); and Part 1120
Restaurants, cafeterias, snack bars and all other non-patient dining areas	Section 1110.230(c); (d); (e); and (f); and Part 1120
Chapels	Part 1120
Telephone systems	Part 1120

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Administration and volunteer offices

Section 1110.230(c) and (e); and--(g); and Part 1120

Giftshops-and-newsstands

Part--1120

Auditoriums; student--housing---and classrooms

Part--1120

Modernization of structural components (roof replacement, housing--and--classrooms; masonry work, etc.)

Section 1110.230(c) (g) and (e); Subpart E of Part 1110; and Part 1120

Boiler repair or replacement (does not include boiler plant)

Section 1110.230(c) and (e) and---(g); Section 1110.420(b); and Part 1120

Replacement of equipment with comparable equipment to be utilized for a similar purpose

Section 1110.230(c) and (e) and---(g); Section 1110.420(b); and Part 1120

Medical office buildings, fitness centers, and other non-inpatient space

Section 1110.230(c), (d) and (e); and Part 1120

Roading-docks

Part--1120

Capitalized projects which are considered basically maintenance such as carpeting, tile replacement or furniture purchase

Section 1110.230(e); and Section 1110.420(b); and Part 1120

Emergency-transportation-equipment

Part--1120

Air-conditioning

Part--1120

Bridges, tunnels, walkways, elevators or other any structures designed to provide access between or through existing buildings; chapels; educational facilities including auditoriums, classrooms, student housing; emergency transportation equipment; gift shops, news stands and other

Part 1120

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

retail space; mechanical systems for heating, ventilation and air conditioning; loading docks; telephone systems

c) Substantive Review Classification. All projects that do not include components specified in subsection (b) shall be subject to review and shall be classified substantive unless they are found to be emergency projects as delineated in subsection (a) above.

d) Classification of projects with both non-substantive and substantive components. Projects which include both substantive and non-substantive components shall be classified as substantive.

e) Classification Appeal. Appeal of any classification may be made to the State Board at the next scheduled State Board meeting.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.60 Master Design Projects

a) Definition

Master Design Project means a proposed project solely for the planning and/or design costs associated with an institutional master plan or with one or more future construction or modification projects. Project costs include: preplanning costs, site survey and soil investigation costs, architects fees, consultant fees and other fees related to planning or design. The master design project is for planning and design only and shall not contain any construction elements.

b) Review Coverage

Master design projects shall be classified as substantive. Such projects shall be reviewed to determine the financial and economic feasibility of the master design project itself, the need for the proposed master plan or for the future construction or modification project(s), and the financial and economic feasibility of the proposed master plan or of the future construction or modification project(s). Findings concerning the need for beds and services and financial feasibility made during the review of the master design project are applicable only for the master design project. Approval by the State Board of a master design project does not obligate approval or positive findings on future construction or modification projects implementing the design. Future applications including those involving the replacement or addition of beds are subject to the review criteria and bed need in effect at the time of State Board review.

c) Applicable Review Standards

1) The estimated project costs of a master design project shall be subject to review only under the applicable review criteria of 77

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

111. Adm. Code 1120.
- 2) The master plan or the future construction or modification project(s) proposed pursuant to the master design project shall be subject to the applicable review criteria of 77 Ill. Adm. Code 1120 and the following review criteria found in this Part:
- Section 1110.230(a) Location
- Section 1110.230(b)(1) Background of Applicant
- Section 1110.230(c)(1) Alternatives to the Proposed Project
- Section 1110.230(d) Medical Education
- Section 1110.235(f) System Impact Additional General Review Criteria for Master Design and Related Projects Only
- Section 1110.320(a) Establishment of Additional Hospitals
- Section 1110.320(b) Allocation of Additional Beds
- Section 1110.420(b) Modern Facilities
- Section 1110.530(a) Unit Size
- Section 1110.630(a) Facility Size
- Section 1110.730(a) Unit Size
- Section 1110.830(b) Establishment or Addition of Substance Abuse/Addiction Treatment Beds
- Section 1110.930(b)(1) Letter of Agreement
- Section 1110.1030(b) Unit Size
- Section 1110.1130(f) Tumor Registry
- Section 1110.1230(b) Establishment of Open Heart Surgery
- Section 1110.1330(b) Establishment or Expansion of Cardiac Catheterization Service
- Section 1110.1330(d) Modernization of Existing Cardiac Catheterization Equipment
- Section 1110.1430(b) Minimum Size of Renal Dialysis Center or Renal Dialysis Facilities
- Section 1110.1730(a) Facility Size
- Section 1110.1730(c) Zoning
- Section 1110.1830(a) Facility Size
- Section 1110.1830(d)(1) Recommendation from the State Department Agencies
- Section 1110.1830(f)(1) Zoning
- Section 1110.1930(f) Multi-institutional Systems
- Section 1110.2030(a) Initial Introduction
- Section 1110.2130(d) Location
- Section 1110.2330(a) Establishment of a Program
- 3) The applicant must document that all beds and services to be developed pursuant to the master design project must be needed and that access to each service will be improved as a result of the proposed master plan or the construction or modification project(s). The applicant must indicate an anticipated completion date for the future construction or modification projects and document that:
- A) the proposed number of beds and services to be developed pursuant to the master design project must be consistent

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- with the bed or service need determination of 77 Ill. Adm. Code 1109 or
- B) if bed or service need determinations do not support the proposed number of beds and services that there are existing factors which support the need for such development at the time of project completion. Such factors include but are not limited to:
- i) limitations on governmental funded or charity patients that are expected to continue;
- ii) restrictive admission policies of existing planning area health care facilities that are expected to continue;
- iii) the planning area population is projected to exhibit indicators of medical care problems such as average family income below poverty levels or projected high infant mortality; and
- E) Utilization of the proposed beds and services will meet or exceed the utilization targets established in 77 Ill. Adm. Code 1109 within two years after completion of the future construction or modification project(s). Documentation shall include:
- i) historical service/bed utilization levels;
- ii) projected trends in utilization including the rationale and projection assumptions used in such projections;
- iii) anticipated market factors such as referral patterns or changes in population characteristics (age, density, wellness) which would support utilization projections; and
- iv) anticipated changes in the delivery of the service due to changes in technology, care delivery techniques or physician availability which would support the projected utilization levels.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART B: REVIEW CRITERIA--DISCONTINUATION

Section 1110.110 Introduction

When discontinuation as defined in Section 1110.120 is proposed, an application for permit is required. It is the intent of the State Board that all applications for permit for discontinuation be processed promptly by all reviewing agencies. The review shall include opportunity for a public hearing.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Section 1110.120 Discontinuation--Definition

"Discontinuation" means to a cease operation of an entire health care facility or to cease operation of a category of service and is further defined in 77 Ill. Adm. Code 1130. Part of or phased closure shall be deemed "discontinuation" if it meets the definition of "substantially changes the bed count" as defined in Section 1100.220--("Substantially changes the bed count" of A--Health-Care-Facility)--and--the requirements of Section 1110.130 will apply--it--should--be--noted, however--that daily or seasonal fluctuations in bed complement do not require an application for permit for "discontinuation".

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.130 Discontinuation--Review Criteria

a) The applicant must provide the following:

- 1) the reasons for the discontinuation;
- 2) the anticipated or actual date of discontinuation or the date the last person was or will be discharged or treated, as applicable;
- 3) the availability of other services or facilities in the planning area that are available and willing to assume the applicant's workload without conditions, limitations, or discrimination;
- 4) a closure plan indicating the process used to provide alternative services or facilities for the patients prior to or upon discontinuation;
- 5) the anticipated use of the physical plant and equipment after discontinuation has occurred and the anticipated date of such use.

The--State--Board--will--approve--a--discontinuation--project--only--if--the proposed discontinuation will not have an adverse effect on the health needs of the area--in--the--determination--of--what--constitutes--an adverse effect--the--State--Board--will--take--into--consideration--the recommendations of the area-wide health planning organization--reflected in its Health Systems Plan and Annual Implementation Plan--in--addition to the adopted Rules of the State Board.

b) Each application for discontinuation will be analyzed to determine:

- 1) that the stated reasons for the proposed discontinuation are valid and are of such a nature to warrant discontinuation;
- 2) that the discontinuation project will not adversely affect the services needed by the planning area community as calculated in the appropriate Appendix of this Subchapter;
- 3) that the discontinuation project will not have an adverse affect on the health delivery system by creating demand for services which cannot be met by existing area facilities;
- 4) that the discontinuation project is in the public interest and would not cause planning area residents unnecessary hardship by

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

the limitation of access to needed services including the effect of the proposed discontinuation on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, the elderly and other underserved groups to obtain needed health care;

- 5) that (in every project for discontinuation except the discontinuation of a total health care facility) the anticipated use to which the physical plant and equipment will be put once the discontinuation takes place and the date such action will occur is appropriate.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART C: GENERAL, MASTER DESIGN, AND CHANGES OF OWNERSHIP REVIEW

CRITERIA APPLICABLE TO ALL PROJECTS EXCEPT PROJECTS OTHER THAN DISCONTINUATION

Section 1110.210 Introduction

This Subpart C contains all General, Master Design, and Changes of Ownership Review Criteria that apply in total or in part to all projects except discontinuation and certain non-substantive projects other than those applying to discontinuation projects--these criteria apply to all projects.

Section 1110.230 General Review Criteria

a) Location--Review Criterion

An applicant who proposes to establish a new health care facility or a new category of service or who proposes to acquire major medical equipment that is not located in a health care facility and that is not being acquired by or on behalf of a health care facility must document the following:

- 1) The applicant must document that the primary purpose of the proposed project will be to provide care to the residents of the planning area in which the proposed project will be physically located. Documentation for existing facilities shall include patient origin information for all admissions for the last 12 months. Patient origin information must be presented by zip code and be based upon the patient's legal residence other than a health care facility for the last six months immediately prior to admission. For all other projects for which referrals are required to support the project, patient origin information for the referrals is required. Each referral letter must contain a certification by the health care worker physician that the representations contained therein are true and correct. A complete set of the referral letters with original notarized signatures must accompany the application for permit.

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

2) ~~The applicant must document that the location selected for a proposed project will not create a maldistribution of beds and services. Maldistribution is typified by such factors as: a ratio of beds to population (population will be based upon the most recent census data by zip code), within 30 minutes travel time under normal driving conditions of the proposed facility, which exceeds one and one half times the State average; an average utilization rate for the last 12 months for the facilities providing the proposed service(s) within 30 minutes travel time under normal driving conditions of the proposed project which is below the Board's target occupancy rate; or the lack of a sufficient population concentration in an area to support the proposed project.~~

b) ~~Ancillary and Supporting Services--Review--Criterion:--The applicant must document--that--the--scope--and--size--of--all--ancillary--and--support services--related--to--the--proposed--project--comply--with--the--Agency's licensure--requirements--Documentation--shall--constitute--of--a--summary--of all--ancillary--and--support--services--and--a--comparison--of--existing--size or--proposed--size--to--licensure--requirements.~~

c) ~~Staffing--Review--Criterion~~

1) ~~All--applicants--must--document--that--the--supply--of--manpower currently--available--in--the--area--is--sufficient--to--meet--the--health service--needs--in--that--area--Documentation--should--include--but--is not--limited--to--letters--from--employment--services--in--the--area indicating--the--number--of--potential--health--care--employees--on--their rolls--letters--from--local--health--departments--in--whose jurisdiction--the--applicant--is--located--indicating--the availability--of--licensed--personnel--in--the--planning--area--actual applications--for--employment--on--file--with--the--applicant--and surveys--performed--by--persons--other--than--the--applicant--regarding the--availability--of--manpower.~~

2) ~~Any applicant proposing a long-term care category of service must document--that--the--required--staffing--levels--under--applicable licensure--and--Federal--Medicare--and--Medicaid--certification regulations--will--be--met.~~

b) ~~d) Background--Review Criterion:~~

1) ~~The applicant shall demonstrate that it is fit, willing and able, and has the qualifications, background and character to adequately provide a proper standard of health care service for the community. In evaluating the fitness of the applicant, the State Board shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application.~~

2) ~~For purposes of this subsection:~~

A) ~~"Adverse action" means conviction of any felony or any misdemeanor involving fraud or dishonesty; any supervision, probation, suspension, revocation, termination, or denial of~~

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

a license or certificate or registration; imposition of a conditional license; termination or suspension from participation in any program involving payment authorized under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act, as amended; or denial, suspension, revocation or termination of accreditation by a nationally recognized organization.

B) A health care facility is considered "owned or operated" by every person or entity which, within the three years preceding the filing of the application, owns, directly or indirectly, an ownership interest as specified in this subsection (b)(2).

C) "Ownership interest" means any legal or equitable interest, including any interest arising from a lease or management agreement, which gives rise to participation in profits or losses, or which gives rise to the exercise or implementation of any decision-making authority respecting the operations or finances of the health care facility.

i) In the case of an individual, "ownership interest" includes any interest owned or exercised, directly or indirectly, by or for the individual's spouse or children.

ii) In the case of a partnership, "ownership interest" includes any interest owned or exercised, directly or indirectly, by or for any general partner, and the partnership is considered to be owned by all of its general partners.

iii) In the case of a limited liability company, "ownership interest" includes any interest owned, directly or indirectly, by or for any member or partner, and the limited liability company is considered to be owned by all of its members or partners.

iv) In the case of an estate, "ownership interest" includes any interest owned or exercised, directly or indirectly, by any beneficiary, and the estate is considered to be owned by all of its beneficiaries.

v) In the case of a trust, "ownership interest" includes any interest owned or exercised, directly or indirectly, by any beneficiary, and the trust is considered to be owned by all of its beneficiaries.

vi) In the case of a corporation, "ownership interest" includes any interest owned, directly or indirectly, by or for any principal shareholder, member, director or officer, and the corporation is considered to be owned by its principal shareholders, members, directors and officers.

D) "Principal shareholder" means

i) In the case of a corporation having 30 or more

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

shareholders, a person who, directly or indirectly, beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the corporation.

- ii) In the case of a corporation having fewer than 30 shareholders, a person who, directly or indirectly, beneficially owns, holds or has the power to vote 50% or more of any class of securities issued by the corporation, or any member of any group of five or fewer shareholders which, directly or indirectly, beneficially own, hold or have the power to vote 80% or more of any class of securities issued by the corporation.

- E) If any person or entity owns any option to acquire stock, such stock shall be considered to be owned by such person or entity.

3) Examples of facilities owned or operated by the applicant:

- A) The applicant, Partnership ABC, owns 60 percent of the shares of Corporation XYZ which manages the Good Care Nursing Home under a management agreement. The applicant, Partnership ABC, owns or operates Good Care Nursing Home.
- B) The applicant, Healthy Hospital, a corporation, is a subsidiary of Universal Health, the parent corporation of Healthcenter ASTC, its wholly-owned subsidiary. The applicant, Healthy Hospital, owns and operates Healthcenter ASTC.
- C) Dr. Wellcare is the applicant. His wife is the director of a corporation which owns a hospital. The applicant, Dr. Wellcare, owns or operates the hospital.
- D) Drs. Faith, Hope and Charity own 40%, 35%, and 10%, respectively, of the shares of Healthfair, Inc., a corporation, which is the applicant. Dr. Charity owns 45% and Drs. Well and Care each own 25% of the shares of XYZ Nursing Home, Inc. The applicant, Healthfair, Inc., owns and operates XYZ Nursing Home, Inc.
- 4) Documentation to be submitted shall include:
 - A) A listing of all health care facilities owned or operated by the applicant, including licensing, certification and accreditation identification numbers, if applicable;
 - B) proof of current licensure and, if applicable, certification and accreditation of all health care facilities owned or operated by the applicant;
 - C) a certification from the applicant listing any adverse action taken against any facility owned or operated by the applicant during the three (3) years prior to the filing of the application.
 - D) authorizations permitting the State Board and Agency access to information in order to verify any documentation or

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

information submitted in response to the requirements of this subsection (b)(4) or to obtain any additional documentation or information which the State Board or IDPH Agency finds pertinent to this subsection (b)(4). Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by the State Board.

- 5) If during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior application may be utilized to fulfill the data requirements of this Part rule. In such cases, applicant must state that the information has been previously provided to IDPH the-State-Agency, cite the project for the prior application, and certify that no changes have occurred regarding the information which has been previously provided.

- 6) In addition to documentation submitted by the applicant, the State Board and IDPH Agency shall review the official records of IDPH the-State-Agency, other State agencies, and, where applicable, those of other states, respecting licensure and certification, and shall review the records of nationally recognized accreditation organizations to determine compliance with the requirements of this subsection (b).

(c) Alternatives to the Proposed Project--Review Criterion. The applicant must document that the proposed project is the most effective or least costly alternative. Documentation shall consist of a comparison of the proposed project to alternative options. Such a comparison must address issues of cost, patient access, quality, and financial benefits in both the short and long - term. If the alternative selected is based solely or in part on improved quality of care, the applicant shall provide empirical evidence including quantifiable outcome data that verifies improved quality of care. Alternatives must include, but are not limited to: purchase of equipment, leasing or utilization (by contract or agreement) of other facilities, development of freestanding settings for service and alternate settings within the facility.

(d) Need For the Project--Review Criterion. The project must be needed.

- 1) If the State Board has determined need pursuant to Part 1100, the proposed project shall not exceed additional need determined unless the applicant meets the criterion for a variance.
- 2) If the State Board has not determined need pursuant to Part 1100, the applicant must document that it will serve a population group in need of the services proposed and that insufficient service exists to meet the need. Documentation shall include but not be limited to:

- A) area studies (which evaluate population trends and service use factors);
- B) calculation of need based upon models of estimating need for the service (all assumptions of the model and mathematical

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

calculations must be included);

- C) historical high utilization of other area providers; and
- D) identification of individuals likely to use the project.

3) If the project is for the acquisition of major medical equipment that does not result in the establishment of a category of service, the applicant must document that the equipment will achieve or exceed any applicable target utilization levels specified in Appendix B within 12 months after acquisition.

eg) Size of Project--Review Criterion. The applicant must document that the size of a proposed project is appropriate.

- 1) The proposed project cannot exceed the norms for project size found in Appendix B of this Part unless the additional square footage beyond the norm can be justified by one of the following:

- A) the proposed project requires additional space due to the scope of services provided;
- B) the proposed project involves an existing facility where the facility design places impediments on the architectural design of the proposed project;
- C) the proposed project involves the conversion of existing bed space and the excess square footage results from that conversion; or

- D) the proposed project includes the addition of beds and the historical demand over the last five year period for private rooms has generated a need for conversion of multiple bed rooms to private usage.

2) When the State Board has established utilization targets for the beds or services proposed, the applicant must document that in the second year of operation the annual utilization of the beds or service will meet or exceed the target utilization. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures which would increase utilization.

h) Mediast-Education--Review-Criterion

- i) If--the-project-proposed-is-designed-to-meet-the-health-education or-related-research-needs-of-the--facility--the--applicant--must document-the-following:

- A) the--proposed--project--would-assist-the-facility-in-meeting its-research-or-educational-needs--for--related--residency programs--Documentation--must-indicate-that-accreditation would-be-lost-without-the-proposed-project-and-that--current space-is-insufficient-to-meet-projected-teaching-needs?
- B) the--proposed--project--will--not--have-an-adverse-impact-on community-facilities-within-the-planning-area-and-that--such community-facilities-support-the-project--Documentation shall-consist-of-letters-from--non-teaching--community hospitals--in--the--planning-area-indicating-support-for-the

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

project-or-indicating-that-the-proposal-will-have-no-adverse impact-on-the-utilization-of-their-services?

- e) how-the-proposed-project-compares-in-function-and-design-to similar-programs-in-other-teaching-hospitals-in-Illinois-and nationally.-----Documentation-shall-consist-of--detailed comparisons-of-volume-requirements-and-square-footage-needs in-similar-institutions-both-in-Illinois-and-nationally,--and the-facility--is--unable--to--meet--its--teaching-or-related research-needs--through--the--use--of--existing--resources. Documentation-shall-consist-of--statements--concerning--the inability--to--utilize-vacant-or-under-utilized-areas--of--the applicant-facility--and-statements--detailing-any-prohibitive reasons-for-not-utilizing-space--in--other--facilities--to provide-the-proposed-project.
- B) This-criterion-shall-not-be--the-sole-basis-for-approval-of-a project-and-cannot-be-used-to-justify--the--creation--of--a--new health-care-facility.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.235 Additional General Review Criteria for Master Design and Related Projects Only

- a) "System Impact of {Master Plan Design--Projects--Only}" -- Review Criterion. The applicant must document that the proposed master plan or future construction or modification project(s) will have a positive impact on the health care delivery system of the planning area in terms of improved access, long term institutional viability, and availability of services. Documentation shall address:

- 1) the availability of alternative health care facilities within the planning area and the impact the applicant's proposed future project(s) will have on the utilization of such facilities;
- 2) how the services proposed in the applicant's future project(s) will improve access to area residents;
- 3) what the potential impact on area residents would be if the proposed services were not to be replaced or developed; and
- 4) the anticipated role of the facility in the delivery system including anticipated patterns of patient referral, any contractual or referral agreement between the applicant and other providers which will result in the transfer of patients to the applicant's facility.

b) Master Plan or Related Future Projects -- Review Criterion

The applicant must document that all beds and services to be developed pursuant to the master design project must be needed and that access to each service will be improved as a result of the proposed master plan or the construction or modification project(s). The applicant must indicate an anticipated completion date(s) for the future

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

construction or modification projects, and document:

1) that:

A) the proposed number of beds and services to be developed pursuant to the master design project must be consistent with the bed or service need determination of 77 Ill. Adm. Code 1100; or

B) if bed or service need determinations do not support the proposed number of beds and services, there are existing factors that support the need for such development at the time of project completion. Such factors include but are not limited to:

i) limitations on governmental funded or charity patients that are expected to continue;

ii) restrictive admission policies of existing planning area health care facilities that are expected to continue;

iii) the planning area population is projected to exhibit indicators of medical care problems such as average family income below poverty levels or projected high infant mortality; and

2) Utilization of the proposed beds and services will meet or exceed the utilization targets established in 77 Ill. Adm. Code 1100 within two years after completion of the future construction or modification project(s). Documentation shall include:

A) historical service/bed utilization levels;

B) projected trends in utilization including the rationale and projection assumptions used in such projections;

C) anticipated market factors such as referral patterns or changes in population characteristics (age, density, wellness) that would support utilization projections; and

D) anticipated changes in the delivery of the service due to changes in technology, care delivery techniques or physician availability that would support the projected utilization levels.

3) Relationship to Previously Approved Master Design Projects -- Review Criterion

1) The applicant must document that any construction or modification project submitted pursuant to an approved master design project is consistent with the approved design permit. When such construction or modification represents a single phase of a multiple phase master plan, the applicant must document that the proposed phase is consistent with the approved master plan, and that any elements which will be utilized to support additional phases are justified under the approved master design permit. Documentation shall consist of:

A) schematic architectural plans for all construction or modification approved in the master design permit;

B) the estimated project cost for the proposed project and also

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

for the total construction/modification project approved in the master design permit;

C) an item by item comparison of the construction elements (i.e., site, number of buildings, number of floors, etc.) in the proposed project to the approved master design permit; and

D) a comparison of proposed beds and services to those approved under the master design permit.

2) Approval of a proposed construction or modification project that is but one phase in a multiple phase project does not obligate approval or positive findings on construction or modification projects in future phases. Future applications, including those involving the replacement or addition of beds, are subject to the review criteria and bed need in effect at the time of State Board review.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.240 Changes of Ownership Mergers, Consolidations and Acquisitions

a) Introduction. The review criteria contained in this Section are designed to evaluate the impact on the health care system for applicants for permit involving mergers, consolidations or acquisition/change of ownership as defined in 77 Ill. Adm. Code 1130. These criteria are in addition to other applicable criteria.

b) Impact Statement -- Review Criterion. The applicant must submit an impact statement which details any proposed changes in the beds or services currently offered, who the anticipated operating entity will be, the reason for the transaction, any anticipated additions or reductions in employees, and a cost/benefit analysis of the transaction. The statement must reflect at least a two-year period following the date of the change of ownership merger, acquisition or consolidation.

c) Access -- Review Criterion. The applicant must document any changes which may result in the restriction of patient admissions and document that no reductions in access to care will result from the transaction. Documentation shall consist of a written certification that the admission policies of the facilities involved will not become more restrictive and the submission of both the current formal admission policies of all institutions involved and the anticipated policy following completion of the project.

d) Health Care System -- Review Criterion

1) The applicant must document that:

- A) the applicant's care system will not restrict the use of other area care providers; or
- B) the project improves access to services previously unavailable in the community because of the structure of the

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

applicant's care system.

- 2) Documentation must detail the current and proposed relationship with those health care or health related organizations which are to be owned (in whole or in part), affiliated, operated, or under management contract with the applicant and provide the following:

A) all care system service providers and services offered including location, types of services, number of beds, and utilization levels for provided services over the last 12-month period; and

B) the proposed relationship of the project to the care system. Data should include where referrals for categories of service not available at the proposed project will be made, how duplication of services will be resolved, time and travel factors involving referrals within the care system and any organization policies concerning the use of care system providers over other area providers.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART E: MODERNIZATION REVIEW CRITERIA

Section 1110.420 Modernization Review Criteria

- a) Modernization of Beds -- Review Criterion. The applicant must document that the number of beds proposed in each category of service affected does not exceed the number of beds needed to support the facility's utilization in each service proposed at the appropriate modernization target as found in Part 1100. (Utilization shall be based upon the latest 12 month period for which data are available.)
- b) Modern Facilities -- Review Criterion. The applicant must document that the proposed project meets one of the following:

1) The proposed project will result in the replacement of equipment or facilities which have deteriorated and need replacement. Documentation shall consist of, but is not limited to: historical utilization data, downtime or time spent out-of-service due to operational failures, upkeep and annual maintenance costs, and licensure or fire code deficiency citations involving the proposed project.

2) The proposed project is necessary to provide expansion for diagnostic treatment, ancillary training, or other support services to meet the requirements of existing services or services previously approved to be added or expanded. Documentation shall consist of but is not limited to: historical utilization data, evidence of changes in industry standards, changes in the scope of services offered, and licensure or fire code deficiency citations involving the proposed project.

c) Major Medical Equipment -- Review Criterion

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Proposed projects for the acquisition of major medical equipment must document that the equipment will achieve or exceed any applicable target utilization levels specified in Appendix B within 12 months after acquisition.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA--MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section 1110.520 Medical/Surgical, Obstetric, Pediatric and Intensive Care--Definitions

a) Medical/Surgical

1) "Medical-Surgical Service" means a category of service pertaining to the medical-surgical care performed at the direction of a physician in behalf of patients by physicians, dentists, nurses and other professional and technical personnel. For purposes of this Subchapter, the medical-surgical category of service includes such subcategories of service as medical, surgical, ophthalmology, intermediate intensive care, tuberculousis, gynecology (outside obstetric (OB) department), research, eyes-ears-nose and throat, orthopedic, neurology, cardio-thoracic-vascular, trauma, inpatient renal dialysis, special care units, dental and urology. The medical-surgical category of service does not include the following categories of service and their subcategories:

- A) Obstetric Service;
- B) Pediatric Service;
- C) Intensive Care Service;
- D) Rehabilitation Service;
- E) Acute Mental Illness Treatment Service;
- F) Substance Abuse/Addiction Alcoholism Treatment Service;
- G) Neonatal Intensive Care Pertaining/High-Risk Service;
- H) Burn Treatment Service;
- I) General Long-Term Care Categories of Service; and
- J) Specialized Long-Term Care Categories of Service.

2) "Medical-Surgical Unit" means an assemblage of inpatient beds and related facilities in which medical-surgical services are provided to a defined and limited class of patients according to their particular medical care needs.

b) Obstetrics

1) "Combined Maternity and Gynecological Unit" means an entire facility or a distinct part of a facility which provides both a program of maternity care (as defined in subsection (b)(3) Subsection below) and a program of obstetric gynecological care (as defined in Subsection subsection (b)(5) below) and which is

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

designed, equipped, organized and operated in accordance with the requirements of the "Hospital Licensing Act" [210 ILCS 85] (Rev.-Stat.-1991-ch-111-1/27-pars-142-et-seq.).

2) "Fertility Rate" means projections of population fertility based upon resident birth occurrence as provided by IDPH the Agency and population projections as provided by the Illinois Bureau of the Budget.

3) "Maternity Care" means a subcategory of obstetric service related to the medical care of the patient prior to and during the act of giving birth either to a living child or to a dead fetus and to the continuing medical care of both patient and newborn infant under the direction of a physician in behalf of the patient by physicians, nurses, and other professional and technical personnel.

4) "Maternity Facility or Unit" means an entire facility or a distinct part of a facility which provides a program of maternity and newborn care and which is designed, equipped, organized, and operated in accordance with the requirements of the "Hospital Licensing Act".

5) "Obstetric Gynecological Care" means a subcategory of obstetric service where medical care is provided to clean gynecological, surgical, or medical cases which are admitted to a postpartum section of an obstetric unit in accordance with the requirements of the "Hospital Licensing Act".

6) "Obstetric Service" means a category of service pertaining to the medical or surgical care of maternity and newborn patients or medical or surgical cases which may be admitted to a postpartum unit.

c) Pediatrics

1) "Designated Pediatric Beds" means beds within the facility which are primarily used for pediatric patients and are not a component part of a distinct pediatric unit as defined in subsection C(2) below.

2) "Pediatric Facility or Distinct Pediatric Unit" means an entire facility or a distinct unit of a facility, where the nurses' station services only that unit, which provides a program of pediatric service and is designed, equipped, organized and operated to render medical-surgical care to the 0-14 age population.

3) "Pediatric Service" means a category of service for the delivery of treatment pertaining to the non-intensive medical-surgical care of a pediatric patient (0-14 years in age) performed at the direction of a physician in behalf of the patient by physicians, dentists, nurses, and other professional and technical personnel.

d) Intensive Care

1) "Intensive Care Service" means a category of service providing the coordinated delivery of treatment to the critically ill patient or to patients requiring continuous care due to special

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

diagnostic considerations requiring extensive monitoring of vital signs through mechanical means and through direct nursing supervision. This service is given at the direction of a physician in behalf of patients by physicians, dentists, nurses, and other professional and technical personnel. The intensive care category of service includes the following subcategories: medical intensive care unit (ICU), surgical ICU, coronary care, pediatric ICU, and combinations of such ICU. This category of service does not include intermediate intensive or coronary care and special care units which are included in the medical-surgical category of service.

2) "Intensive Care Unit" means a distinct part of a facility which provides a program of intensive care service and which is designed, equipped, organized and operated to deliver optimal medical care for the critically ill or for patients with special diagnostic conditions requiring specialized equipment, procedures and staff, and which is under the direct visual supervision of a qualified professional nurses' staff.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART H: CATEGORY OF SERVICE REVIEW CRITERIA--ACUTE MENTAL ILLNESS

Section 110.720 Acute Mental Illness--Definitions

a) "Acute Mental Illness" means a crisis state or an acute phase of one of more specific psychiatric disorders in which a person displays one or more specific psychiatric symptoms of such severity as to prohibit effective functioning in any community setting. Persons who are acutely mentally ill may be admitted to an acute mental illness facility or unit under the provisions of the Mental Health and Developmental Disabilities Code [405 ILCS 5] (Rev.-Stat.-1997-ch-91-1/27-pars-1-100-et-seq.) which determines the specific requirements for admission by age and type of admission.

b) "Acute Mental Illness Facility or Unit" means a facility or a distinct unit in a facility which provides a program of acute mental illness treatment service (as defined below) and which is designed, equipped, organized, and operated to deliver inpatient and supportive acute mental illness treatment services; and which is licensed by the Department of Public Health under the Hospital Licensing Act [210 ILCS 85] (Rev.-Stat.-1997-ch-111-1/27-pars-142-et-seq.) or is a facility operated or maintained by the State or a State agency.

e) "Acute Mental Illness Treatment Service" means a category of service which provides a program of care for those persons suffering from acute mental illness. Such services are provided in a highly

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

structured setting in a distinct psychiatric unit of a general hospital, in a private psychiatric hospital, or in a state-operated facility, to individuals who are severely mentally ill and in a state of acute crisis, in an effort to stabilize the individual and either effect his quick placement in a less restrictive setting or to reach a determination that extended treatment is needed. Acute mental illness is typified by an average length of stay of 45 days or less for adults and 60 days or less for children and adolescents.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.730 Acute Mental Illness--Review Criteria

- a) Unit Size -- Review Criterion. The minimum unit size for acute mental illness beds is 20 beds for facilities within a metropolitan statistical area. The minimum unit size for acute mental illness beds is 10 beds for facilities within nonmetropolitan statistical areas.
- b) Supportive Mental Health Services -- Review Criterion. The applicant must document that the proposed project is or will be a component of an integrated community mental health system, as indicated by the existence of formal multi-institutional service agreements with non-hospital providers. The formal agreements must include:

- 1) A specific process for linking of patients to needed aftercare services;
- 2) A specific process for the exchange of information concerning the patient; and
- 3) Designated staff members or points of contact between the facilities and/or professionals.

- c) Establishment--or--Addition--of--Acute--Mental--Illness--Beds--Review Criterion. The State Board shall deny all applications for permit submitted by persons other than the Department of Mental Health and Developmental Disabilities, to establish a new unit within an existing facility or a new facility for the treatment of acute mental illness when the new unit or facility to be developed will be located in a planning area where a surplus of bed capacity for such treatment has been established by the State Board in accordance with the health care facilities plan developed pursuant to Section 12 of this Act.

- gd) High Occupancy Variance to Bed Need -- Review Criterion
- 1) High Occupancy - The applicant must document that the number of beds proposed will not exceed the number needed to reduce the facility's high occupancy to the target occupancy. Applicant facility has experienced exceptionally high occupancy. Applicant Documentation shall consist of evidence that the historical annual occupancy rate has equaled or exceeded the target occupancy in each of the last two years for which data is available.

- 2) Access - The applicant must also document that the proposed

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

project will be providing the acute mental illness category of service that is not readily accessible to the general population of the given planning area. Factors affecting accessibility include, but are not limited to:

- A) Restrictive admission policies by facilities currently providing the service in the area; and/or
- B) Location of existing services requires an excessive amount of travel time (more than 45 minutes under normal driving conditions) for planning area residents to receive service.

In addition, the applicant must provide documentation that the proposed project will achieve, within the first year of operation, the target occupancy for the service and that there is an available number of patients needing the facility's services to meet this level. Number of beds proposed will not exceed the number needed to reduce the facility's high occupancy to the target occupancy.

- de) Type of Admissions -- Review Criterion. The applicant must document that the acute mental illness service will annually achieve the target occupancy beginning in the second year of operation. Documentation shall consist of statistical evidence that there is an available number of patients suffering from psychiatric disorders as referenced in the Diagnostic and Statistical Manual of Mental Disorders, IV Edition (1980), DMS-III, American Psychiatric Association, which would utilize the acute mental illness service.

- ft) Facilities--Operated--by--the--Department--of--Mental--Health--and Developmental Disabilities--Review--Criterion--The applicant must document that the development of an acute care service component is needed. Documentation shall consist of evidence that the number of episodes requiring acute intervention in the chronic patient population justifies the acute service or that the number of direct acute admissions to the facility warrants the development of an acute service.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART I: CATEGORY OF SERVICE REVIEW CRITERIA--SUBSTANCE ABUSE/ADDICTION TREATMENT

Section 1110.810 Introduction

Subpart I contains Review Criteria which pertain to the Substance Abuse/Addiction Treatment Category of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD
NOTICE OF PROPOSED AMENDMENT

indicate where referrals or patient placements are being made currently; why these arrangements cannot be continued and also whether additional patients, to whom care is currently unavailable, would be serviced by the project.

- e) Community Programs -- Review Criterion. The applicant must document that the inpatient service will be a component part of a comprehensive outreach or community treatment program or system. Documentation shall consist of written agreements with providers located within 60 minutes travel time (under normal driving conditions) from the proposed project. Such written agreement must include the following:
 - 1) A specific process for linking patients to needed ambulatory and aftercare services;
 - 2) A specific process for the exchange of information concerning the patient; and
 - 3) Designated staff members or points of contact between the facilities and/or professionals.
- f) Contact with the Department of Human Services Alcoholism-and-Substance Abuse -- Review Criterion. The applicant must document contact with the Department of Human Services Alcoholism-and-Substance Abuse. Documentation must include proof that a request has been submitted to that Department to review the project's relationship to the long-range goals and objectives of that Department. Such a request must be made by certified mail return receipt requested and must occur within a 60-day period prior to the submission of this application.
- g) Distinct Unit -- Review Criterion. The applicant must document that the proposed unit will be self-contained, physically distinct, have an identifiable staff and comply with all appropriate, existing licensure standards of the agency. Documentation shall consist of a narrative which identifies the relationship of the unit to the other facility services and how the unit will be operated in order to comply with licensure requirements.
- h) Distinct Units-Children/Adolescents -- Review Criterion. The applicant must document that treatment of children or adolescents will occur in a unit separate and distinct from any units for the treatment of adults. Documentation shall include line drawings detailing the configuration of the unit and certification that the unit will be separate and distinct.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART J: CATEGORY OF SERVICE REVIEW CRITERIA--NEONATAL INTENSIVE CARE

Section 1110.920 Neonatal Intensive Care--Definitions

"Neonatal Intensive Care" means a level of care providing constant and close medical coordination, multi-disciplinary consultation and supervision to those neonates with serious and life threatening

HEALTH FACILITIES PLANNING BOARD
NOTICE OF PROPOSED AMENDMENT

Section 1110.820 Substance Abuse/Addiction Treatment--Definitions

a) "Substance Abuse/Addiction Treatment Facility or Unit" means any facility or any distinct, physically identifiable unit in a facility which is operated by the State or which is licensed pursuant to or operated in accordance with the "Hospital Licensing Act" or the "Nursing Home Care Reform Act of 1979" and which provides a service of substance abuse treatment.

b) "Substance Abuse/Addiction Treatment Service" means a category of service that which provides inpatient detoxication and rehabilitation care for a person who suffers from addiction to drugs and/or alcohol and related mental/physical conditions or that provides treatment and rehabilitation care for a person who suffers from other addictive conditions.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.830 Substance Abuse/Addiction Treatment--Review Criteria

- a) Detoxification Services -- Review Criterion. The applicant must document that detoxification services are provided or will be provided under the direction of a certified substance abuse/addiction treatment counselor. (Beds utilized for detoxification not located within a substance abuse unit are not counted against unit bed totals.) Documentation shall consist of a narrative as to how and where detoxification is performed.
- b) Establishment or Addition of Substance Abuse/Addiction Treatment Beds -- Review Criterion. The applicant must document that the proposed project involves the conversion of excess beds from another category of service. Documentation shall consist of identification of all patient rooms affected and a revised floor plan for the facility.
- c) Supportive Services -- Review Criterion. The applicant must document that outpatient and intermediate services and care, including diagnostic evaluations, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling will be provided. Documentation shall consist of a narrative detailing the scope and nature of support services provided and the manner in which services will be provided.
- d) Target Occupancy -- Review Criterion. The applicant must document that the proposed percent of beds will operate at an average occupancy rate of 90 percent by documenting the projected case load. Documentation must include, but is not limited to, copies of written correspondence with physicians, private or public social organizations and employer and employee organizations which demonstrate that these sources are currently experiencing difficulties obtaining inpatient Substance Abuse/Addiction Treatment Services. Such correspondence must

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

developmental or acquired medical and surgical problems which require highly specialized treatment and highly trained nursing personnel.

"Neonatal Intensive Care Service" means a category of service providing treatment of the infant for problems identified in the neonatal period which warrant intensive care. An intensive neonatal care service must include a related obstetric service for care of the high-risk mother (except when the facility is dedicated to the care of children).

"Neonatal Intensive Care Unit" means a distinct part of a facility which provides a program of intensive neonatal care and which is designed, equipped, and operated to deliver medical and surgical care to high-risk infants.

"Neonatologist" means a physician who is certified by the American Board of Pediatrics Sub-Board of Neonatal/Perinatal medicine or a licensed osteopathic physician with equivalent training and experience and certified by the American Osteopathic Board of Pediatricians.

"Perinatal Center" means a referral facility intended to care for the high-risk patient before, during or after labor and delivery and characterized by sophistication and availability of personnel, equipment, laboratory, transportation techniques, consultation and other support services. Such a center shall be a university or university-affiliated facility responsible for the administration and implementation of the Department of Human Services' Public-Health regionalized perinatal health care program including continuing education for health professions.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.930 Neonatal Intensive Care--Review Criterion

a) Staffing -- Review Criterion

1) The applicant must document that the personnel possessing proper credentials in the following categories are available to staff the service:

- A) Full-time Neonatal Director - a neonatologist as defined in Section 1110.920.
- B) Full-time Subspecialty Obstetrical Director - an obstetrician certified by the American Board of Obstetrics and Gynecology in the subspecialty of Maternal and Fetal Medicine or a licensed osteopathic physician with equivalent training and experience and certified by the American Osteopathic Board of Obstetricians and Gynecologists.
- C) Other neonatologists and obstetricians sufficient in number

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

to serve the projected number of maternal and neonatal patients to be served by the facility and to ensure adequate back-up to the neonatal and obstetrical directors so that there will be continuity of patient care and consultation.

- D) Full-time Nurse-Director of the obstetric-newborn nursing service who is experienced in perinatal nursing, and preferably holds a master's degree.
 - E) Other nurses adequate in number to serve the projected number of maternal and neonatal patients to be served by the facility.
 - F) Board-Certified Anesthesiologist with training in maternal, fetal and neonatal anesthesia (24-hour availability).
 - G) One or more licensed social workers.
 - H) Respiratory therapists with experience in neonatal care and adequate in number to ensure availability of a minimum of one respiratory therapist for every four patients on mechanical ventilators.
 - I) Registered dietician with experience in perinatal nutrition.
- 2) Documentation shall consist of:
- A) letters of interest from potential employees;
 - B) applications filed with the applicant for a position;
 - C) signed contracts with required staff; or
 - D) a narrative explanation of how other positions will be filled.
- b) Letter of Agreement -- Review Criterion. The applicant must document that a letter of agreement with the regional perinatal center for neonatal intensive care services has been signed. Such letter of agreement must fulfill the conditions for such letters found in the Regionalized Perinatal Health Care Code (77 Ill. Adm. Code 640) and be approved by the Department of Human Services Public-Health. A copy of the letter shall serve as documentation.
- c) Need for Additional Beds -- Review Criterion
- 1) The applicant must document that the proposed neonatal intensive care beds are needed. Bed need may be documented by any of the following:
 - A) no neonatal intensive care services exist within the planning area;
 - B) that for each of the last two years for which data is available, the yearly occupancy rate for the service at the affiliated perinatal center has exceeded the target occupancy rate;
 - C) existing providers of the service within the planning area cannot provide care to a patient caseload due to a limitation on funding for care providing; or
 - D) that for each of the last two years for which data is available, the yearly occupancy rate for the service at the applicant facility has exceeded the target occupancy rate.
 - d) Obstetric Service -- Review Criterion. The applicant must document

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

the availability within the facility of an obstetric service capable of providing care to high-risk mothers. Documentation must include a detailed assessment of obstetric service capability. This requirement does not apply to a facility dedicated to the care of children.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART K: CATEGORY OF SERVICE REVIEW CRITERIA--BURN

Section 1110.1010 Introduction

Subpart K contains Review Criteria which pertain to the Burn Treatment category of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1020 Burn Treatment--Definitions

a† "Burn Care Technician" means a licensed practical or vocational nurse with an operating room technician or corpsman; or a high school graduate with basic nurse aide training who has received special education or experience in burn treatment care.

b† "Burn Center Unit" means a facility or a distinct part of a facility which provides a program of burn treatment service and which is a specially designed physical area which is set aside exclusively for the physical management of burn patients in all phases of treatment, staffed by individuals trained specifically to provide the necessary care.

c† "Burn Specialist" means a registered professional nurse who possesses experience in general nursing and experience in and/or knowledge of intensive nursing care and burn treatment care.

d† "Burn Treatment Service" means a category of service providing an appropriate mix of services for those patients requiring "Burn Treatment" including treatment capability for the following 3 Classifications of Burn Injuries:

i† Major Burn Injury - Second degree burns of greater than 25% Body Surface Area (BSA) in adults (20% in children), all third degree burns involving hands, face, eyes, ears, feet, perineum, all inhalation injury, electrical burns and complicated burn injury involving fractures, or other major trauma and all poor risk

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

patients.

2† Moderate Uncomplicated Burn Injury - Second degree burns of 10-15% BSA in adults (10-20% in children) with less than 10% third degree burn and which does not involve eyes, ears, face, hands, feet or perineum. Excludes electrical injury, complicated injury (fractures), inhalation injury and all poor risk patients (extremes of age, intercurrent disease, etc.).

3† Minor Burn Injury - Second degree burns of less than 15% BSA in adults (10% in children) with less than 2% third degree, not involving eyes, ears, face, hands, feet or perineum. Excludes electrical injury, inhalation injury, complicated injury (fractures), and all poor risk patients (extremes of age, intercurrent disease, etc.).

e† "Clinical Nurse Specialist in Burn Care" means a registered professional nurse possessing a master's degree in nursing with a burn care specialty or equivalent experience.

f† "Severe Burn" means all burns that cover more than 20 percent of the body area, and burns requiring intensive treatment, such as but not limited to, inhalation injuries, chemical and electrical burns, burns with complications such as fractures, burns to the face, full thickness burns to the hands or feet, patients with burns where pre-burned health was known to be poor, such as diabetes, heart disease, etc., and for those experiencing burns that are under 5 and over 60 years of age.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART L: CATEGORY OF SERVICE REVIEW CRITERIA--THERAPEUTIC RADIOLOGY

Section 1110.1110 Introduction (Repealed)

Subpart-B contains Review-Criteria-which-pertain-to-the--therapeutic--Radiology category--of--service-----These--Review-Criteria-are-utilized-in-addition-to-the "General-Review-Criteria"-outlined-in-Subpart-C-and-any-other-applicable-Review Criteria-outlined-in-Subparts-B-and-E:

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1110.1120 Therapeutic Radiology--Definitions (Repealed)

a† "Brachytherapy" means--a--type--of--radiation--therapy-which-involves applying-a-radioactive-material-within-or-in--close--approximation--to

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- the patient; this material may be contained in various types of apparatuses; e.g., tubes, needles, wires, seeds, and other small containers; Common materials used in brachytherapy are radium-226, cobalt-60, cesium-137, and gold-198; Interstitial, intracavitary, and surface applications are forms of brachytherapy; (See Agency Note #1)
- b) "Cancer" means a malignant tumor or neoplasm, varying from highly curable local skin, oral and cervix cancers to rapidly fatal advanced cancers; (See Agency Note #2)
- c) "Cancer incidence" means the number of patients newly diagnosed in a specific calendar year within a defined population; This is often expressed as the ratio of new cases per unit of population per year (rate); (See Agency Note #2)
- d) "Cancer prevalence" means the total number of patients (old or new) with cancer present during a specified time within a defined population; (See Agency Note #2)
- e) "External Beam Therapy/teletherapy" means a type of radiation therapy which delivers radiation from a source at a distance from the body through an external beam; (See Agency Note #1)
- f) "Interstitial irradiation" means a form of brachytherapy which involves a radiation source(s) placed in the tissue; (See Agency Note #1)
- g) "Intracavitary irradiation" means a form of brachytherapy which involves the use of radiation source(s) within special applicators placed within body cavities; (See Agency Note #1)
- h) "Megavoltage treatment" means a form of external beam therapy which involves the delivery of energy greater than or equivalent to one million volts by the emission of x-rays, gamma rays, electrons, or other radiation; (See Agency Note #1)
- i) "Oncology" means the study and treatment of tumors;
- j) "Orthovoltage treatment" means a form of external beam therapy which involves the delivery of x-rays generated by voltages approximately between 140 and 600 kilovolts; (See Agency Note #1)
- k) "Radiation oncologist" means a person certified by the American Board of Radiology in therapeutic radiology or its equivalent; (See Agency Note #3)
- l) "Radiation therapy procedure" means one patient visit for therapy regardless of the number of fields;
- m) "Radiation therapy technologist or radiologic technologist" means a person who has completed at least two years experience in radiation therapy or who is registered by the American Board of Radiologic technologists; (See Agency Note #3)
- n) "Radiologic physicist" means a person who is a graduate physicist and is either certified or eligible for certification by the American Board of Radiology or its equivalent or who is a graduate physicist with equivalent training and experience to that required by the American Board of Radiology; (See Agency Note #1)
- o) "Radiologist" means a physician who is certified by the American Board of Radiology in the field of radiology or in one or more of its

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- subspecialties or who has equivalent education, training, experience and knowledge to that of persons so certified; (See Agency Note #1)
- p) "Superficial treatment" means a form of external beam teletherapy which involves the delivery of minimally penetrating x-ray of low peak energy generated by voltages of 140 kilovolts or less; Such treatment is used to treat lesions on the body surface; (See Agency Note #1)
- q) "Therapeutic radiology or radiation therapy" means a category of service which involves the delivery of a precisely controlled and monitored dose of radiation to a well defined volume of tumor-bearing tissue within a patient; The radiation dose may be delivered by the use of radioactive implants in the tumor region for a prescribed period of time or by directing a beam of ionizing radiation from an external source through the patient's skin towards the tumor region; For purposes of this Subchapter, only megavoltage treatment shall constitute the category of service; In addition, only the acquisition, modernization or discontinuation of megavoltage equipment shall require a permit;
- r) "Treatment courses" means a prescribed series of megavoltage procedures given to a patient to treat cancerous tissue in a given location or locations; If additional procedures are required to treat a recurrence of cancer in a patient already treated, that series of procedures shall also constitute a course of treatment;
- s) "Tumor Registry" means a registry which lists patients with tumors cataloging all anatomic sites and providing statistical reports on site, stage, method of diagnosis, treatment, results and follow-up; A registry may be institution wide or serve an entire region;
- AGENCY NOTE #1: A Glossary of Terms for Radiation Therapy, American College of Radiology, Supplement No. 2, September 1975, (in some instances definitions modified based upon testimony received at public hearings)
- AGENCY NOTE #2: Guidelines for the Development of Criteria and Standards for Radiation Therapy Services by Health System Agencies, Draft prepared by Health Resources Administration, 1977;
- AGENCY NOTE #3: The Role of Radiation Oncology, report to the National Institute of Health by the Subcommittee for Revision of the Blue Book, (1960 report); Committee for Radiation Therapy Studies, November 17, 1973;

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1110.1130 Therapeutic Radiology--Review Criteria (Repealed)

- a) "Variances to Computed Need for Additional Megavoltage Equipment"--Review Criteria
 1) The State Board recognizes that in some instances facilities may be operating existing megavoltage equipment at utilization levels which exceed recommended levels; Therefore, the State Board may

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

approve an application for additional megavoltage equipment at a facility which can document the following:

- A) that its case load during the latest 12-month period for which data is available has averaged in excess of 11,250 treatments per piece of existing megavoltage equipment; and
- B) that acquisition of additional equipment will result in an average case load of 300 annual treatment courses per piece of megavoltage equipment within six months after acquisition of the additional equipment; and
- C) that there are no facilities within 45 minutes travel time under normal driving conditions from the applicant facility which can or will absorb the increased projected case load of the applicant facility.

2) Accessibility Variance--The following variance is recognized by the State Board as a basis for granting approval to a project which is not in accord with computed need for the therapeutic radiology category of service:

A) Entitlement to this variance is dependent on the proposed project's documentation that the proposed project will be providing a therapeutic radiology category of service which is not readily accessible to the general population of the given planning area. Factors affecting accessibility include but are not limited to:

- i) Restrictive admission policies by facilities currently providing the service in the area; and/or
- ii) Location of existing services requires an excessive amount of travel time (more than 45 minutes under normal driving conditions) for area residents to receive service.

B) In addition to the above, the proposed project must provide documentation that the proposed project will achieve within the first year of operation the target occupancy for the service and that there is an available number of patients needing the facility's services to meet this level.

b) Allocation of Additional Megavoltage Equipment Based on Formula--Need--Review Criteria

Where the Agency indicates a need for additional megavoltage equipment, such equipment will be allocated to facilities which currently have megavoltage equipment which is being utilized to provide at least 300 annual treatment courses per year per machine and which can demonstrate that the new equipment will serve a case load of 15-20 patients a day (within six months after the equipment is acquired) without reducing utilization of existing equipment below the 300 annual treatment courses per year level. In the event that no facilities exist or can meet the above criteria, the State Board will approve an application for the establishment of a new facility or the expansion of an existing facility which currently provides megavoltage services in areas which have underutilized facilities no addition of

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

equipment will be approved in any facility within 30 minutes travel time of an underutilized facility:

- c) "Support Services"--Review Criteria
Any applicant proposing to expand, modify or establish a therapeutic radiology service must document that each cancer patient has or will have access to specialty services which can contribute to the diagnosis and treatment of his or her disease.

d) "Class of Additional Megavoltage Equipment"--Review Criteria
The State Board recognizes that minimum recommended utilization for megavoltage equipment is 300 annual treatment courses per year irrespective of the size or capability of the equipment. In order to prevent unnecessary duplication of certain classes of equipment, the following principles apply to the acquisition of additional equipment:

i) Additional Class A equipment will be allowed only at facilities that provide a full range of diagnostic and therapeutic radiology services and as one of its primary functions conducts teaching and training programs for such specialties as radiologists, radiation therapists, radiation biologists, radiation physicists and associated technical staff. Such equipment may be acquired only if the facility can document that its existing megavoltage equipment is being appropriately utilized (300 annual treatment courses per year per piece of equipment) and that the facility's case load and mix of cancer patients is such that the capabilities of its existing equipment cannot adequately treat the patients. The facility must document that its case load of patients needing such additional equipment will be 15-20 patients a day (within six months after the equipment is acquired) and that acquisition of the additional equipment will not result in a reduction in utilization of other existing equipment below the recommended 300 annual treatment courses per year.

ii) Additional Class B equipment may be acquired only if the facility can document that its existing megavoltage equipment is being appropriately utilized (300 annual treatment courses per year per piece of equipment) and that the facility's case load and mix of cancer patients is such that the capabilities of its existing equipment cannot adequately treat the patients. The facility must document that its case load of patients needing such additional equipment will be 15-20 patients a day (within six months after the equipment is acquired) and that acquisition of the additional equipment will not result in a reduction in utilization of other existing equipment below the recommended 300 annual treatment courses per year.

A) Class C equipment will be added to existing facilities which can document that existing megavoltage equipment is being appropriately utilized (300 annual treatment courses per year per piece of equipment) and

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- iii) that the capabilities of its existing equipment cannot adequately treat the patients; and/or
- iii) the acquisition of the additional equipment will not result in a reduction in utilization of existing equipment; and/or
- iv) the proposed project is justified based upon the applicant's documenting that the proposed project will result in an improvement of distribution or accessibility of services;
- B) Facilities which do not have megavoltage equipment must meet only conditions in subsections A (i) and/or A (ii) and/or A (iv) above:
- e) "Tumor Registry"---Review Criteria
- The State Board recognizes the need to gather and share information regarding cancer incidence and treatment. Therefore, no application for permit will be approved unless documentation is provided indicating that:
- 1) for existing facilities providing therapeutic radiology a cancer or tumor registry is currently functioning; or
- 2) for facilities proposing the establishment of therapeutic radiology, a cancer or tumor registry will be established.
- f) "Staffing"---Review Criteria
- 1) A proposed project for therapeutic radiology equipment must document that it has or can meet the following minimum staffing criteria based upon the Committee for Radiation Therapy Studies report to the National Cancer Institute:

Facilities with Megavoltage Capability	Personnel	Availability
	Radiation Oncologist	Full-time
	Physicist	Full-time
	Radiation Therapy Technologist (at least one per megavoltage unit)	Full-time
2) In addition, the facility must have available the following personnel as needed: nurse, dosimetrist, radiobiologist, machinist and mold technician.		
3) It should be noted that the State Board encourages the Agency and the Hospital Licensing Board to develop licensure standards for staffing of therapeutic radiology services. The staffing standards detailed in this Section shall be utilized by all reviewing agencies unless standards are adopted and promulgated by the Agency in accordance with the Illinois Administrative Procedure Act for therapeutic radiology services in which case those standards shall be utilized.		
g) "Modernization or Replacement of Existing Equipment"---Review Criteria		

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- The State Board recognizes the need for facilities to maintain equipment which is modern and up-to-date and which will enable patients to receive the highest quality of care possible. In reviewing applications for replacement of radiation therapy equipment the following principles apply:
- 1) The State Board will not approve any applications for replacement of megavoltage equipment which is not being utilized at recommended standards, 300 treatment courses per year, when other facilities within 45 minutes travel time under normal driving conditions of the applicant facility have megavoltage equipment which is also underutilized and which could absorb the applicant's existing case load.
- 2) For equipment which is to be replaced by a unit of the same class, the applicant must demonstrate that replacement is necessary because of such conditions as the existing unit being inefficient or too costly to maintain.
- 3) For megavoltage equipment which is to be replaced by a unit of a different class, the applicant must demonstrate that the current unit is operating at approximately 300 treatment courses per year and that the different class is needed because the existing equipment cannot adequately treat its current and projected case load and mix of cancer patients.
- 4) The State Board will not approve applications for permit unless documentation is provided which indicates that the replacement equipment will operate at an appropriate level of utilization, 300 treatment courses per piece of equipment. No exception will be allowed unless the proposed project can be justified based upon the applicant's documenting that the proposed project will result in an improvement of distribution or accessibility of services;

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA---CHRONIC RENAL DIALYSIS

Section 110.1420 Chronic Renal Dialysis Service---Definitions

- a) "Acute Dialysis" is dialysis given on an intensive care, inpatient basis to patients suffering from (presumably reversible) acute renal failure, or to patients with chronic renal failure with serious complications.
- b) "Chronic Renal Dialysis" is a category of service in which dialysis is performed on a regular long-term basis in patients with chronic irreversible renal failure. The maintenance and preparation of patients for kidney transplantation (including the immediate post-operative period and in case of organ rejection) or other acute

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

conditions within a hospital does not constitute a chronic renal dialysis category of service.

e) "Dialysis" is a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The two types of dialysis which are recognized in classical practice are hemodialysis and peritoneal dialysis.

d) ~~Renal-Dialysis-Facility-means-a-hospital-unit-or-freestanding-facility which-furnishes-routine-chronic-dialysis-services-to-chronic-renal disease-patients-Such-types-of-services-are-self-dialysis training-in-self-dialysis-dialysis-performed-by-trained-professional staff-and-chronic-maintenance-dialysis~~

"Hematocrit" means a measure of the packed cell volume of red blood cells expressed as a percentage of total blood volume.

e) "Hemodialysis" is a type of dialysis that involves the use of artificial kidney through which blood is circulated on one side of a semipermeable membrane while the other side is bathed by a salt dialysis solution. The accumulated toxic products diffuse out of the blood into the dialysate bath solution. The concentration and total amount of water and salt in the body fluid is adjusted by appropriate alternations in composition of the dialysate fluid.

f) "Peritoneal Dialysis" is a type of dialysis in which the dialysate fluid is injected slowly into the peritoneum, causing dialysis of water and waste products to occur through the peritoneal sac which acts as a semipermeable membrane. The fluid and waste, after accumulating for a period of time (1 hour), is drained from the abdomen and the process is repeated. This procedure is much slower than hemodialysis, requiring the patient to be immobilized for a long period of time.

"Renal Dialysis Facility" means a freestanding facility or a unit within an existing health care facility that furnishes routine chronic dialysis service(s) to chronic renal disease patients. Such types of services are: self-dialysis, training in self-dialysis, dialysis performed by trained professional staff and chronic maintenance dialysis including peritoneal dialysis.

g) "Self-Care Dialysis Training" is a program which trains Chronic Renal Disease patients or their helpers, or both, to perform self-care dialysis.

h) "Self-Dialysis" or "Self-Care Dialysis" is maintenance dialysis performed by a trained patient at home or in a special facility with

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

or without the assistance of a family member or other helper.

"Urea" means the chief product of urine and the final product of protein metabolism in the body.

"Urea Reduction Ratio (URR)" means the amount of blood cleared of urea during dialysis. It is reflected by the ratio of the measured level of urea before dialysis and urea remaining after dialysis. The larger the URR, the greater the amount of urea removed during the dialysis treatment.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1430 Chronic Renal Dialysis -- Review Criteria

- a) Data System -- Review Criterion. An the applicant proposing to establish a renal dialysis facility must document that a chronic renal dialysis data system exists or will be established. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.
- b) Minimum Size of Renal Dialysis Center or Renal Dialysis Facilities -- Review Criterion. The minimum facility size for establishment of a renal dialysis facility is:
 - 1) three dialysis stations within the facility in areas not included in an MSA or in an MSA of less than 500,000 people;
 - 2) six dialysis stations in MSA's of over 500,000 population.
- c) Access/Variance to Station Need -- Review Criterion. An applicant proposing to establish a renal dialysis facility or to add stations when no need for additional stations exists in the planning area must document one of the following:
 - 1) a new facility will improve access in a geographic area that is within 30 minutes travel time of the proposed facility site as evidenced by documentation that verifies:
 - A) all existing renal dialysis facilities in the area are operating at or in excess of the target utilization level for the latest 12 month period for which data is available; and
 - B) a sufficient number of patients is experiencing an access problem to justify the proposed number of stations at the minimum utilization level detailed in 77 Ill. Adm. Code 1100; and
 - C) the caseload at all existing renal dialysis facilities in the area will not be adversely affected; or
 - 2) additional stations are needed to reduce high utilization of an existing facility as evidenced by documentation that verifies that the number of proposed stations will reduce the facility's experienced utilization level for the latest 12 month period for

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

which data is available to the minimum utilization level detailed in 77 Ill. Adm. Code 1100.

- i) The applicant must document that access to the proposed service is restricted in the planning area as documented by:
 - A) all existing renal dialysis facilities are operating at full utilization as reflected in three patient shifts per day, or
 - B) renal dialysis facilities are not available to 90 percent of the population of the planning area within 45 minutes travel time and the proposed project will meet that need.
- 2) Documentation shall consist of location and historical utilization of other planning area service providers; patient location information; all applicable time travel studies and a certification of waiting times or scheduling problems in existing facilities.
- 3) The applicant must also document that the number of patients who are experiencing an access problem will justify the proposed project at the minimum utilization level detailed in 77 Ill. Adm. Code 1100.
- d) Establishment of Facilities -- Review Criterion -- It is the policy of the State Board that no new renal dialysis center or facility be established in a planning area unless:
 - i) All existing renal dialysis centers or facilities within the planning area are operating at or above the minimum utilization for such facilities as detailed in 77 Ill. Adm. Code 1100.630; and
 - 2) There is a calculated need for additional stations in the planning area. The need for treatment stations will be based upon the need figures shown in the update to the Inventory of Health Care Facilities in effect at the time of State Board consideration; and
 - 3) The applicant documents that the proposed new facility will improve access to care by demonstrating that services are not available within 30 minutes travel time of the proposed facility; or
 - 4) the applicant documents conformance with the variance detailed in subsection (e) of this Section.
- e) Location -- Review Criterion -- The applicant must document that the location of the proposed project is accessible. Documentation shall consist of a narrative relating the proposed location to public transportation, other providers and to the population to be served. It also must include floor plans of the facility, and the protocols for evacuation of the residents in an emergency such as a fire.
- d) Support Services -- Review Criterion. The applicant proposing to establish a renal dialysis facility must document that clinical and pathological laboratory services, blood bank, nutrition, rehabilitation, psychiatric and social services, and self-care dialysis support services, will be available. Documentation shall consist of a narrative as to how such services will be provided. This

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.

- e) Affiliation Agreements -- Review Criterion. The applicant proposing to establish a renal dialysis facility must document that a written affiliation agreement or arrangement is in effect for the provision of inpatient care and other hospital services. Documentation shall consist of copies of all such agreements. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.
- f) Self-Care and Home Dialysis Training -- Review Criterion. The applicant proposing to establish a renal dialysis facility must document that self-care dialysis, self-care instruction, home dialysis and home training will be provided at the applicant facility or that a written agreement with another facility for the provision of these services exists. Documentation shall consist of a certification that services are provided by the applicant or copies of all agreements for provision of such services. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.
- g) Relocation of Facilities -- Review Criterion. This criterion may only be used to justify the relocation of a facility from one location in the planning area to another in the same planning area and may not be used to justify any additional stations. Compliance with this review criterion estimates the need to address the review criteria in subsections (f) and (d) of this Section. The applicant must document the following:
 - 1) that the existing facility has met the occupancy targets detailed in 77 Ill. Adm. Code 1100.630 for the latest 12 month period for which data is available;
 - 2) that the proposed facility will improve access for care to the existing patient population; and
 - 3) that the existing facility needs to be replaced, as documented by the applicant, in order to comply with Section 110.420(b).
- h) Addition of Stations -- Review Criterion. This criterion applies to an existing facility which proposes the addition of stations at the existing site. The applicant must document the following:
 - 1) that the existing facility has met the occupancy targets set forth in 77 Ill. Adm. Code 1100.630 for the latest 12 month period for which data is available;
 - 2) that there are sufficient additional patients in need of the service to justify using the methodology prescribed in 77 Ill. Adm. Code 1100.630 (e); that the facility, at the end of the first 12 months of operation, will meet the occupancy targets set forth in 77 Ill. Adm. Code 1100.630;
 - 3) that the proposed project will not adversely impact the workload at any other existing facility within 30 minutes travel time of the applicant facility; and
 - 4) that a need for additional stations exists in the planning area

HEALTH FACILITIES PLANNING BOARD
NOTICE OF PROPOSED AMENDMENT

HEALTH FACILITIES PLANNING BOARD
NOTICE OF PROPOSED AMENDMENT

The specific criteria of this Part section will not apply to the following: Hospital projects that which will provide ambulatory surgery service and that which will be operated in accordance with the provisions of the Hospital Licensing Act. Projects of this type will be reviewed under the General Modernization Review Criteria (Subpart-B) and the General Review Criteria that apply to all projects (Subpart-B).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1540 Non-Hospital Based Ambulatory Surgery--Review Criteria

- a) "Licensee"---Review Criterion
Any applicant proposing to establish or modernize a non-hospital-based ambulatory surgery category of service must document compliance or an administrative plan in the case of facilities proposing to establish the service which would assure compliance with all appropriate licensing regulations of the Agency.
- a)b) "Scope of Services Provided" -- Review Criterion
Any applicant proposing to establish a non-hospital based ambulatory surgical category of service must detail the surgical specialties that which will be provided by the proposed project and whether the project will result in a limited specialty or multi-specialty ambulatory surgical treatment center (ASTC).

1) The applicant must indicate which of the following surgical specialties will be provided at the proposed facility:

- A) Abortions
- B) Anesthesia
- A)g Cardiovascular
- B)g Dermatology
- C)g Gastroenterology
- D)g General/Other (includes any procedure that is not included in the other specialties)
- E)g Neurological
- F)g Obstetrics/Gynecology
- G)g Ophthalmology
- H)g Oral/Maxillofacial
- I)g Orthopaedic
- J)g Otolaryngology
- K)g Plastic
- L)g Podiatry
- M)g Thoracic
- N)g Urology
- Other

2) The applicant must indicate which of the following type of ASTC will result from the proposed project:
A) Limited specialty ASTC, which provides one or two of the surgical specialties listed in this Section; or

based upon the update to the Inventory of Health Care Facilities in effect at the time of State Board consideration; or that the proposed project is in conformance with the access variance set forth in subsection (c) of this Section.

1) Quality of Care -- Review Criterion. The applicant must demonstrate the following:

- 1) that the average number of its patients whose urea reduction ratio (URR) is equal to or greater than 0.65 over a six month period that exceeds the average for Illinois as most recently reported by The Renal Network, Inc. (911 East 86th Street, Suite 202, Indianapolis, Indiana 46240, 317-257-8265);
- 2) that the average number of its patients whose hematocrit level is equal to or greater than 31% over a six month period exceeds the average for Illinois dialysis facilities as most recently reported by The Renal Network, Inc.; and
- 3) that the mortality rate is less than the average overall mortality rate among Illinois renal dialysis facilities as most recently reported by The Renal Network, Inc.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART P: CATEGORY OF SERVICE REVIEW CRITERIA--
NON-HOSPITAL BASED AMBULATORY SURGERY

Section 1110.1520 Non-Hospital Based Ambulatory Surgery--Definitions

a) "Ambulatory Surgical Treatment Center" means any institution, place or building required to be licensed pursuant to the "Ambulatory Surgical Treatment Center Act" [210 ILCS 5] (11-Rev-Stat-1983-ch-111-1/27 pars-157-8-1-et-seq.).

b) "Non-Hospital Based Ambulatory Surgery" means a category of service relating to surgery that is performed at ambulatory surgical treatment centers on patients that arrive and are discharged the same day. Ambulatory surgery as the provision of surgical services may require anesthesia or a period of post-operative observation or both on a patient whose inpatient stay is not anticipated as being medically necessary. (See Agency Note-#1)
AGENCY NOTE-#1--O'Donovan-Thomas-R-7--"Ambulatory--Surgical--Centers Development-and-Management"-Aspen-1976.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1530 Non-Hospital Based Ambulatory Surgery--Projects Not Subject to This Part

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- B) Multi-specialty ASTC, which provides at least three of the surgical specialties listed in this Section. In order to be approved as a multi-specialty ASTC, the applicant must document that at least 250 procedures will be performed in at least three of the surgical specialties listed in this Section.

AGENCY NOTE: A permit is required for the addition of a surgical specialty by a limited specialty ASTC. Pursuant to information on file with the Agency's licensing program on March 1, 1995, the State Board has classified all existing and approved ASTCs as either limited specialty or multi-specialty. A permit is not required for the addition of a surgical specialty by a multi-specialty ASTC. Ambulatory surgical treatment facilities licensed as of March 1, 1995 shall be classified by the Agency as either limited specialty or multi-specialty based upon the timing of surgical specialties on file with the Agency's licensure program on that date.

b) Target Population -- Review Criterion

Because of the nature of ambulatory surgical treatment, the State Board has not established geographic service areas for assessing need. Therefore, an applicant must define its intended geographic service area and target population. However, the intended geographic service area shall be no less than 30 minutes and no greater than 60 minutes travel time (under normal driving conditions) from the facility's site.

c) Projected Patient Volume -- Review Criterion

- 1) The applicant must provide documentation of the projected patient volume for each specialty to be offered at the proposed facility. Documentation must include physician referral letters which contain the following information:

- the number of referrals anticipated annually for each specialty;
 - for the past 12 months, the name and location of health care facilities to which patients were referred, including the number of patients referred for each surgical specialty by facility;
 - a statement by the physician that the information contained in the referral letter is true and correct to the best of his/her information and belief;
 - the typed or printed name and address of the physician, his/her specialty and his/her notarized signature.
- 2) Referrals to health care providers other than ambulatory surgical treatment centers (ASTC) or hospitals will not be included in determining projected patient volume. The applicant shall provide documentation demonstrating that the projected patient volume as evidenced by the physician referral letters is from within the geographic service area defined under subsection (b)(1).

d) Treatment Room Need Assessment -- Review Criterion

NOTICE OF PROPOSED AMENDMENT

- 1) Each applicant proposing to establish or modernize a non-hospital based ambulatory surgery category of service must document that the proposed number of operating rooms are needed to serve the projected patient volume. Documentation must include the average time per procedure for the target population including an explanation as to how this average time per procedure was developed. The following formula can be applied in determining treatment room need:

$$\frac{\text{Required Treatment Rooms}}{\text{Hrs. of Surgery/Yr.}} =$$

$$250 \text{ Days/Yr.} \times 7.5 \text{ Hrs./Day} \times .80^{**}$$

(*Hours of surgery includes cleanup and setup time and will be based on the projected volume)
(**80% is the desired occupancy rate)

- 2) There must be a need documented for at least one fully utilized (1,500 hours) treatment room for a new facility to be established. Also, utilizing the formula the application must document the need for each treatment room proposed.

e) Impact on Other Facilities -- Review Criterion

An applicant proposing to change the specialties offered at an existing ASTC or proposing to establish an ASTC must document the impact the proposal will have on the outpatient surgical capacity of all other existing ASTCs and hospitals within the intended geographic service area and that the proposed project will not result in an unnecessary duplication of services or facilities. Documentation shall include any correspondence from such existing facilities regarding the impact of the proposed project, and correspondence from physicians intending to refer patients to the proposed facility. Outpatient surgical capacity will be determined by the Agency, utilizing the latest available data from the Agency's annual questionnaires, and will be the number of surgery rooms for ASTCs and the number of equivalent outpatient surgery rooms for hospitals. Equivalent outpatient surgery rooms for hospitals are determined by dividing the total hours of a hospital's outpatient surgery by 1,500 hours.

In addition to documentation submitted by the applicant, the State Agency shall review utilization data from annual questionnaires submitted by such health care facilities and data received directly from health facilities located within the intended geographic service area, including public hearing testimony.

f) Establishment of New Facilities -- Review Criterion

Any applicant proposing to establish an ambulatory surgical treatment center will be approved only if one of the following conditions

HEALTH FACILITIES PLANNING BOARD

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

exists:

- 1) There are no other ASTCs within the intended geographic service area of the proposed project under normal driving conditions; or
- 2) All of the other ASTCs and hospital equivalent outpatient surgery rooms within the intended geographic service area are utilized at or above the 80% occupancy target; or
- 3) The applicant can document that the facility is necessary to improve access to care. Documentation shall consist of evidence that the facility will be providing services which are not currently available in the geographic service area, or that existing underutilized services in the geographic service area have restrictive admission policies; or
- 4) The proposed project is a co-operative venture sponsored by two or more persons at least one of which operates an existing hospital. The applicant must document:
 - A) that the existing hospital is currently providing outpatient surgery services to the target population of the geographic service area;
 - B) that the existing hospital has sufficient historical workload to justify the number of operating rooms at the existing hospital and at the proposed ASTC based upon the Treatment Room Need Assessment methodology of this Section;
 - C) that the existing hospital agrees not to increase its operating room capacity until such time as the proposed project's operating rooms are operating at or above the target utilization rate for a period of twelve full months; and
 - D) that the proposed charges for comparable procedures at the ASTC will be lower than those of the existing hospital.

g) ~~h)~~ Charge Commitment -- Review Criterion
In order to meet the purposes of the Act which are to improve the financial ability of the public to obtain necessary health services and to establish a procedure designed to reverse the trends of increasing costs of health care, the applicant shall include all charges except for any professional fee (physician charge). The applicant must provide a commitment that these charges will not be increased, at a minimum, for the first two years of operation unless a permit is first obtained pursuant to 77 Ill. Adm. Code 1130.310(a).

h) ~~g)~~ Change in Scope of Service -- Review Criterion
Any applicant proposing to change the surgical specialties currently being provided by adding one or more of the surgical specialties listed under subsection a) ~~b)~~ of this Section must document one of the following:

- 1) that there are no other facilities (existing ASTCs or hospitals with outpatient surgical capacity) within the intended geographic service area which provide the proposed new specialty; or
- 2) that the existing facilities (existing ASTCs or hospitals with outpatient surgical capacity) within the intended geographic

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 3) that the existing programs are not accessible to the general population of the geographic service area in which the applicant facility is located.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART R: CATEGORY OF SERVICE REVIEW CRITERIA--GENERAL LONG TERM CARE

Section 1110.1720 General Long-Term Care--Definitions

- a) "General Long-Term Care" means a classification of categories of service that which provides inpatient levels of care primarily for convalescent or chronic disease adult patients/residents who do not require specialized long-term care services.
- b) The General Long-Term Care Classification includes the following Categories of Services:

- 1) Nursing Category of Service. The Nursing Category of Service provides inpatient treatment for convalescent or chronic disease patients/residents and includes the skilled nursing level of care and/or the intermediate nursing level of care (both as defined in IDPH's the-Agency's Long-Term Care Facilities Minimum Standards, Rules and Regulations).
- 2) Sheltered Care Category of Service. The Sheltered Care Category of Service includes only the sheltered level of care (as defined in the Long-Term Care Facilities Minimum Standards, Rules and Regulations). The State Board notes that persons who have established or are operating unlicensed sheltered care or nursing care facilities are in violation of the provisions of this Act with respect to obtaining a permit and are subject to the sanctions or penalties prescribed by law.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1730 General Long-Term Care--Review Criteria

- a) Facility Size -- Review Criterion. The maximum size of a general long-term care facility is 250 beds, unless the applicant documents that a larger facility would provide personalization of patient care and documents provision of quality care based on the experience of the applicant and compliance with IDPH's the-Agency's licensure standards (77 Ill. Adm. Code: Chapter I, Subchapter c) (Long-Term Care Facilities) over a 2 year period of time.
- b) Community Related Functions -- Review Criterion. The applicant must document cooperation with and the receipt of the endorsement of

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

community groups in the town or municipality where the facility is or is proposed to be located, such as, but not limited to, social, economic or governmental organizations or other concerned parties or groups. Documentation shall consist of copies of all letters of support from such organizations.

- c) Zoning -- Review Criterion. The applicant must document one of the following:

- 1) the property to be utilized has been zoned for the type of facility to be developed;
- 2) zoning approval has been received; or
- 3) a variance in zoning for the project is to be sought.

- d) Variances to Computed Nursing Care Bed Need -- Review Criterion

- 1) Defined Population Variance.

A) The applicant must document that the proposed project will service a defined population group of a religious, fraternal or ethnic nature from throughout the entire health service area or from a larger geographic area (hereinafter referred to as the GA) proposed to be served and which includes, at a minimum, the entire health service area in which the facility is or will be physically located. Documentation shall consist of the following:

- i) a description of the proposed religious, fraternal or ethnic group proposed to be served;
- ii) the boundaries of the GA; and
- iii) the number of individuals in the defined population which lives within the proposed GA, including the source of the figures.

- B) In addition, the applicant must document each of the following:

- i) the proposed services do not exist in the GA where the facility is or will be located; and
- ii) the services cannot be instituted at existing facilities within the GA in sufficient number to accommodate the group's needs. The applicant must enumerate each specific service the proposed facility will provide which could not be provided in any of the existing facilities in the GA; the basis for determining why such service could not be provided.

- C) The application must document that the proposed number of beds is needed based upon the target occupancy rate. Documentation shall consist of an identification of the defined population volume; the patient origin of the proposed patients; and a rationale for the utilization projections.

- D) The applicant must document that at least 85 percent of the residents of the facility will be members of the defined population group. Documentation shall consist of written admission policy which insures that the requirements of this

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

subsection will be met.

- E) The applicant must document that the proposed project is either directly owned, sponsored or affiliated with the religious, fraternal or ethnic group that has been defined as the population to be served by the project. The applicant must provide legally-binding documents which prove ownership, sponsorship or affiliation.

- 2) Continuum of Care Variance

A) The applicant must document that the project will provide a continuum of care for a geriatric population which includes independent living and/or congregate housing (such as unlicensed apartments, high rises for the elderly, and retirement villages) and related health and social services. Such housing complex must be on the same site as the health facility component of the project. Such a proposal must be for the purposes of and serve only the residents of the housing complex and may be developed in one of the following ways:

- i) The proposal may be developed after the housing complex has been established; or
- ii) The proposal may be developed as a part of a total housing construction program, provided that, the entire complex is one inseparable project and that there is a documented demand for the housing and that the licensed beds will not be built first, but will be built concurrently with or after the residential units.

- B) The applicant must also document the following:

- i) That the proposed number of beds are needed. Documentation shall consist of a list of available patients/residents needing the proposed project. The proposed number of beds may not exceed one licensed long-term care bed for every five apartments or independent living units; and
- ii) That its written policies of operation provide that if a resident of the retirement community is transferred to the long-term care unit, the resident will not lose his or her apartment unit or be transferred to another long-term care facility solely because of the resident's altered financial status or medical indigency.

- e) Need Assessment for Sheltered Care Beds -- Review Criterion

An applicant proposing the addition of sheltered care beds must document need as specified in Section 110.230. Each area study must identify the facility's proposed planning or geographic service area (GSA). The geographic service area shall be no less than 30 minutes and no greater than 45 minutes travel time (under normal driving conditions) from the facility's site. The applicant shall identify

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

all existing beds and sheltered care facilities (including those for which permits have been granted but that are not operational) that are located within the geographic service area. The area study shall address the historical occupancy for existing facilities and whether beds are available in the area. For existing facilities that have operated below the target occupancy (based upon utilization data reported to IDPH for the latest three calendar years for which data is available), the applicant must document that existing underutilized beds are not available to provide sheltered care services. Documentation includes, but is not limited to, verification that a facility is utilizing bed space for other purposes, restrictive admissions policies, utilization of two bed rooms for private rooms, etc.

f) Impact of Other Facilities -- Review Criterion

An applicant proposing to add sheltered care beds must document the impact the proposal will have on existing nursing and sheltered care facilities (including those for which permits have been granted but that are not operational) within the geographic service area and that the proposed project will not result in an unnecessary duplication of services or facilities. Documentation shall include evidence that existing facilities have been contacted in writing regarding the proposed project and any correspondence received from such existing facilities regarding the impact of the proposed project.

g)

Discharge Criteria for Sheltered Care -- Review Criterion
An applicant proposing the establishment or addition of sheltered care beds must provide a copy of its resident contract agreement. The contract must document the conditions that will result in the discharge of a resident, such as, but not limited to, a resident posing a serious threat to him/herself or to others, a resident not being able to communicate his or her needs, or a resident who needs continual nursing care for an extended period of time. In addition, the applicant must provide the facility's policy regarding discharge of residents who no longer have sufficient financial resources to remain in the facility.

h) Affiliation or Nursing Care Referral for Sheltered Care -- Review Criterion

An applicant proposing the establishment or addition of sheltered care beds must document the following:

- 1) the sheltered care beds are located in a facility that is or will be licensed to provide nursing care services; or
- 2) a policy for the transfer of residents who require nursing care has been established that provides the resident and/or the family or guardian with a selection of nursing facilities, at least one of which is located in the geographic service area, that have established a formal transfer or referral agreement with the applicant.

i) Community Service Requirements for Sheltered Care -- Review Criterion

An applicant proposing the establishment or addition of sheltered care

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

beds must provide services to the community such as, but not limited to, the following: educational and activities programs, meals on wheels, adult day care, screening services, etc.

j) Assurance Requirements for Sheltered Care -- Review Criterion

An applicant proposing the establishment, addition, or modernization of sheltered care beds must certify that the sheltered care beds will not be converted to nursing care until at least five years after the date of project completion. Such assurance shall apply to subsequent facility owners or operators.

k) Minimum Beds and Size for Sheltered Care Facilities -- Review Criterion

The applicant must document that a facility that is or will be licensed solely for sheltered care will contain at least 60 sheltered care beds if the proposed project is located in a metropolitan statistical area. In addition, the minimum gross square footage (GSF) allocation for new sheltered care facilities shall be at least 450 GSF per bed.

l) Staffing -- Review Criterion

Applicants must document that the supply of manpower currently available in the area is sufficient to meet the health service needs in that area. Documentation should include, but is not limited to, letters from employment services in the area indicating the number of potential health care employees on their rolls; letters from local health departments, in whose jurisdiction the applicant is located, indicating the availability of licensed personnel in the planning area; actual applications for employment on file with the applicant; and surveys performed by persons other than the applicant regarding the availability of manpower.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART S: CATEGORY OF SERVICE REVIEW CRITERIA--
SPECIALIZED LONG-TERM CARE

Section 110.1820 Specialized Long-Term Care--Definitions

"Specialized Long-Term Care" means a classification consisting of categories of service which provides inpatient care primarily for children (ages 0 through 21) or inpatient care for adults who require specialized treatment and care because of mental or developmental disabilities. The Specialized Long-Term Care Classification includes the following Categories of Services:

- a) Chronic Mental Illness (M.I.) Category of Service. The Chronic Mental Illness (M.I.) Category of Service includes levels of care provided to severely mentally ill clients in a structured setting in a psychiatric unit of a general hospital, in a private

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

psychiatric hospital, or in a state-operated facility primarily in order to facilitate the improvement of their functioning level, to prevent further deterioration of their functioning level, or, in some instances to maintain their current level of functioning.

b) Long-Term Care for the Developmentally Disabled (Adult) Category of Service. This Category of Service includes levels of care for Developmentally Disabled adults as defined in the Illinois Mental Health and Developmental Disabilities Code (including those facilities licensed as ICF/DD or Intermediate Care Facilities for the Developmentally Disabled) which provide an integrated, individually-tailored program of services for developmentally disabled adults and which provides an active, aggressive, and organized program of services directed toward achieving measurable behavioral and learning objectives. (See-Agency--Note #1)

1) Also--included--in--this--Category--of--Service--are--those--facilities--licensed--as--Intermediate--Care--Facilities--For--the--Developmentally--Disabled--of--Fifteen--(15)--Beds--or--less---All--residents--admitted--to--or--kept--in--such--facilities--must--be--ambulatory--and--be--able--to--move--about--without--assistance--and--must--be--able--to--take--action--for--self--preservation--under--emergency--situations---(See--Note--1)

2) Developmental Disabilities (B-D) shall have the definition as prescribed in the Illinois Mental Health and Developmental Disabilities Code.

c) Long-Term Care for the Developmentally Disabled (Children) Category of Service. This Category of Service includes levels of care for Developmentally Disabled Children and is limited to those residents ages 0 through 21 years and whose condition meets the definition of "Developmental Disabilities" (as defined in the Illinois Mental Health and Developmental Disabilities Code above).

d) Long-Term Medical Care for Children Category of Service. The Long-Term Medical Care For Children Category of Service includes long-term medical services which are provided to those patients/residents ages 0-18 years and which provides for residents suffering from chronic medical disabilities.

AGENCY--NOTE--#1--Minimum--Standards--Rules--and--Regulations--for--the--Classification--and--Licensure--of--Intermediate--Care--Facilities--for--the--Developmental--Disabled

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 110.1830 Specialized Long-Term Care--Review Criteria

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

a) Facility Size -- Review Criterion. The maximum unit size is 100 beds, unless the project is for a State-operated facility or for the long-term medical care for children Category of Service.

b) Community Related Functions -- Review Criterion. The applicant must document the written endorsement of community groups including the following:

1) a detailed description of the steps taken to inform and receive input from the public, including those community members who live in close proximity to the proposed facility's location;

2) endorsements from social service, social, and economic organizations; and

3) support from municipal officials and other elected officials representing the area in which the proposed facility is located.

c) Availability of Ancillary and Support Programs -- Review Criterion. An applicant proposing the establishment of an ICF/DD facility of 16 beds or fewer must document that the community has the necessary support services available to provide care to the proposed facility's residents. Such documentation must include:

1) a copy of the letter, sent by certified mail, return receipt requested, to each of the day programming programs in the area informing them of the proposed project and requesting their comments regarding the impact of the proposed project upon their programs. The applicant shall also provide copies of the responses received from these letters;

2) a description of the transportation services available to the proposed residents;

3) a description of the specialized services, other than day programming, available to the proposed residents;

4) a description of the availability of community activities for the proposed facility's residents, e.g., movie theaters, bowling alleys, etc.; and

5) documentation of the availability of a community workshop to serve the residents.

d) Recommendations from State Departments -- Review Criterion. An applicant proposing a facility for the developmentally disabled must document contact with the Department of Human Services Mental Health and Developmental Disabilities and the Department of Public Aid. Documentation must include proof that a request has been submitted to each Department requesting that each Department determine the project's consistency with the long-range goals and objectives of the Department and requesting the identification of individuals in need of the service. The Departments' responses should address, on both a Statewide and a planning area basis, whether the proposed project meets the Department's planning objectives regarding the size, type, and number of beds proposed, whether the project conforms or does not conform to each Department's plan, and how the project assists or hinders each Department in achieving its planning objectives. Such a request must be made by certified mail return receipt requested and

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

must occur within a 60-day period prior to the submission of this application.

- e) Long-Term Medical Care for Children Category of Service (Only) -- Review Criterion. The applicant must document the following:

1) the planning area served by the facility and the size of the specialized population ages 0-18 years to be served within that geographic area. Documentation must include, but is not limited to, any reports or studies showing the points of origin of patients/residents admitted to the facility, preferably for the latest 12 month period for which data is available;

2) identification of the special programs and/or services to be provided or currently offered by the applicant and the relationship of such programs to the needs of the specialized population (as outlined above);

3) insufficient service capability currently exists to meet this need; and

4) the number of beds in the proposed project is needed by providing documentation that the proposed project will achieve, within the first year of operation, an occupancy of at least 90 percent.

- f) Zoning -- Review Criterion. The applicant must document that:

1) the property to be utilized has been zoned for the type of facility to be developed; or

2) zoning approval has been received; or

3) a certificate of need is required by the local zoning authority before zoning can be approved. Such documentation shall include a letter from the appropriate zoning official indicating that such a requirement exists.

- g) Establishment of Chronic Mental Illness -- Review Criterion. Documentation shall consist of a narrative statement detailing the scope of system changes which have brought about the need for the project and historical utilization of facilities involved. The applicant must document that:

1) all beds will be operated by the State of Illinois;

2) the resident population and type of resident/patient served has changed, necessitating the establishment or expansion of services in order to meet the needs of the facility's residents;

3) the project represents redistribution of existing beds from another facility due to closure of the facility or unit; and

4) admissions from the general public have increased over the last two-year period and the expansion is necessary in order to adequately serve the residents of the facility and the general public.

- h) Establishment of Beds, Developmentally Disabled (Adult) Category of Service -- Review Criterion. Any proposed project to establish a facility of 16 beds or fewer must be located in a planning area where a need for additional beds is calculated using the formula shown in 77 Ill. Adm. Code 1100.670, unless the applicant can document compliance with the requirements for a variance to the computed bed need in

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

subsection (i) of this Section.

- i) Variance to Computed Bed Need for Establishment of Beds, Developmentally Disabled (Adult) Category of Service, for Placement of Residents From Department of Human Services (DHS) Mental--Health--and Developmental--Disabilities--(BMHDB) Operated Beds -- Review Criterion. The applicant must document all of the following:

1) That each of the residents proposed to be served:

A) currently resides in a DHSBMHDB-operated facility and has at least one interested family member residing in the proposed planning area; or has an interested family member who resides out-of-state within 15 miles of the proposed planning area boundary; or

B) has resided in a DHSBMHDB-operated facility physically located in the proposed project's planning area for at least the last 2 years, and the consent of the resident's legal guardian has been obtained for the relocation.

2) All of the existing 16-bed or fewer facilities in the planning area are occupied at or above the 93% target occupancy rate or such facilities have refused to accept residents referred from DHSBMHDB-operated facilities. Documentation of each refusal must include the following:

A) a letter from DHS BMHDB stating the number of times in the last 12 months the facility or facilities have refused to accept referrals of DHSBMHDB-operated facility residents, including the name of the facility, the date of the refusal, and the reason(s) cited for such refusals, if any;

B) a copy of the letter, sent by certified mail return receipt requested, to each of the underutilized facilities in the area asking if they accept referrals from DHSBMHDB-operated facilities, listing the dates of each past refusal, and requesting an explanation of the basis for the refusal in each instance;

C) copies of the responses to the above letters; and

D) a letter from DHS BMHDB indicating that each of the residents to be referred to the proposed facility have been refused admission at all of the other 16-bed or fewer facilities in the planning area.

3) That the proposed relocation of a resident will result in cost savings to the State.⁷

4) That the facility will only accept future referrals from the DHSBMHDB-operated facility in the planning area if a bed is available.⁷ and

5) An explanation of how the proposed facility conforms with or deviates from the DHS BMHDB comprehensive long range development plan for developmental disabilities services.

- j) State Board Consideration of Public Hearing Testimony -- Review Criterion. If public hearing testimony is presented that which indicates that one or more facilities in the planning area have

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

available beds, and are willing to accept DHS BMHBB referrals, IDPH the-State-Agency shall notify DHS BMHBB and request that DHS BMHBB contact the facility or facilities and attempt to place residents in such beds, thereby reducing the need for the proposed additional beds. DHS BMHBB shall notify IDPH the-State-Agency of the results of these placement efforts within 45 days after the date of IDPH the-State-Agency advice. If DHS' BMHBB's response is not received by IDPH the-State-Agency within the specified time period, IDPH the-State-Agency shall assume that the patients were placed appropriately and that the need for such additional beds no longer exists. If the existing facility(ies) refuses to accept such referrals, IDPH the-State-Agency shall be notified by DHS BMHBB of the refusal and of any rationale for the refusal provided to DHS BMHBB by the refusing facility. This material shall then be forwarded to the Board for its consideration. The review period set forth in 77 Ill. Adm. Code 1130.610(b) may be extended by IDPH the-State-Agency for a period not to exceed 60 days.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART T: CATEGORY OF SERVICE REVIEW CRITERIA--
INTRAOPERATIVE MAGNETIC RESONANCE IMAGING

Section 1110.1910 Introduction

Subpart T contains Review Criteria which pertain to the Intraoperative Magnetic Resonance Imaging category of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1920 Intraoperative Magnetic Resonance Imaging--Definitions

"Intraoperative Magnetic Resonance Imaging" means a category of service that utilizes an Intraoperative Magnetic Resonance Imaging machine. The machine is used simultaneously with a surgical or diagnostic procedure and allows free access to the patient from all sides, while enabling the operator to obtain high-resolution images in any desired plane in real time.

a) "Magnetic Resonance" means the use of a category-of-service which utilizes the magnetic spin properties of certain atomic nuclei to visualize and analyze tissue. Magnetic-Resonance--includes--both magnetic-resonance-imaging-and-magnetic-resonance-spectroscopy-

b) "Magnetic Resonance Imaging" means a category-of-medical diagnostic

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

imaging technique that which uses the magnetic spin properties of certain atomic nuclei to visualize and analyze the body tissues.

e) "Magnetic-Resonance--Spectroscopy"--means--the--use--of--magnetic-spin properties--of--certain--atomic--nuclei--to--perform--chemical--analysis--of tissues-

d) "Research-Protocol"--means--a--document--outlining--a--hypothesis--to--be tested--and--the--procedures--used--to--select--patients--for--imaging--or spectroscopy:--the--protocol--must--have--a--purpose--clearly--stated--and--a method--outlined--to--test--the--hypothesis--presented:--it--also--must--detail the--number--of--patients--needed--for--a--meaningful--result:--the--procedures to--be--followed--to--acquire--the--data--and--a--patient--informed--consent--must be--included-

AGENCY NOTE: A permit is required for the acquisition of an Intraoperative Magnetic Resonance (MR) Imaging machine. If a person or healthcare facility wishes to acquire a standard MR machine (one that is not considered Intraoperative) and the cost of the machine is above the major medical equipment threshold, an exemption or permit for the acquisition must be obtained from the State Board.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.1930 Intraoperative Magnetic Resonance Imaging--Review Criteria

a) Location -- Review Criterion "Selection-of-Equipment"-----Review Criterion

The applicant must document that the equipment will be located in a hospital. An applicant must document that the MR device selected--(type of--magnet--site--of--magnet--type--of--unit)--for--use--is--the--most appropriate--in--terms--of--anticipated--utilization--and--ease--mixy--desired quality--of--image--and--access--to--necessary--supplies--(cryogen)-

1) that is an affiliated teaching facility of a medical school (a copy of a letter selecting the location from the Dean (or a designated representative) of a College of Medicine will constitute sufficient documentation); or

2) that has been selected to be the location for a State or national research study that evaluates the efficacy of the intraoperative magnetic imaging scanner (a copy of a letter approving the selection of the location from the entity that is sponsoring the research study will constitute sufficient documentation).

b) Surgical Volume -- Review Criterion "Location"-----Review-Criterion
The applicant must document that a minimum of 10,000 hours of surgery for each of the last two years has been performed at the hospital selected to be the location of the equipment. Documentation will be based upon the latest available data from IDPH's annual questionnaires. Any--applicant--proposing--to--acquire--an--MR--piece--of equipment--must--document--that:

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Patient safety is ensured by equipment placement in a location where it will have no effect upon patients with sensitive electronic devices, such as pacemakers.
- 2) The location is such that there will be no effect upon sensitive electronic devices, such as EEG, EEP, or computers, etc.
- 3) The location is accessible to all patients and appropriate emergency medical procedures are available.
- 4) The location is such that the structural integrity of the building in which it will be located is not at risk and the site was chosen as the most appropriate in terms of accessibility and cost and must also detail all sites considered for equipment placement and indicate why the site was chosen.

c) "Unit Configuration" -- Review Criterion

Any applicant proposing to acquire an MR piece of equipment must detail the square footage and configuration of the MR unit. The applicant must detail the square footage and potential use of available space not dedicated to the MR service included within the project. All non-MR space shall be evaluated under "General Review Criteria" contained in Subpart C and any other applicable Review Criteria outlined in Subparts B and E.

d) "Data" -- Review Criterion

The applicant must document that it will provide utilization data, clinical data, cost data and reports of clinical efficiency in comparison to other forms of diagnostic imaging, as requested by the State Board. A letter stating that, if approved, the applicant will provide all requested data will constitute sufficient documentation.

e) "Need" -- Review Criterion

The need for MR equipment will be based on ratio of one MR device per 4,500 annual computerized tomographic scans (patient visits). The applicant must document that:

- 1) Within the latest 12-month period a minimum of 4,500 computerized tomographic scans were performed within the applicant institution and that the applicant has not entered into a formal written referral agreement to transfer patients to another program or computerized tomographic scans can not be double counted to justify more than one piece of equipment; or
- 2) The health service area as an entity has produced a minimum of 4,500 computerized tomographic scans over the latest 12-month period. In this case the applicant must document that a consortium (joint ownership) or a multi-institutional system will exist where patients will be referred to the applicant facility from the consortium or system member institutions. The combined computerized tomographic scan volume of the consortium or system members must exceed 4,500 scans over the latest 12-month period to justify MR equipment acquisition. Again, if a facility has signed a written referral agreement to transfer patients for MR services, the computerized tomographic scan volume at that institution cannot be utilized to justify an MR service at

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

another location:

- f) "Multi-institutional Systems" -- Review Criterion
Any applicant proposing the acquisition of an MR piece of equipment must document that the applicant facility is a part of a multi-institutional system as defined in Section 110-226 of the reasons why such a system arrangement is not feasible. Any applicant justifying the need for a piece of equipment on the basis of a referral volume from other health care facilities must provide written referral agreements from all such facilities.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA--POSITRON EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section 110.2130 Positron Emission Tomographic Scanning (P.E.T.) --- Review Criteria

a) Initial Introduction -- Review Criteria

- 1) The initial introduction of Positron-Emission Tomographic Scanners will allow the State Board, as well as the statewide health-planning organizations, the opportunity to study data generated by the initial projects, in order to evaluate the efficacy of this technologically innovative equipment.

- 2) The Illinois Health Facilities Planning Board has determined that for the period of study and data collection, one piece of this equipment be allocated for each medical school of the Colleges of Medicine within the State.

b) Appropriate Medical and Related Services to be Provided -- Review Criteria

- 1) Training and Medical Education
Institutions must have on their staff board certified physicians who will participate in the evaluation of P.E.T. Scanners.
- 2) Support Services
Because P.E.T. services should complement other diagnostic modalities P.E.T. scanners shall be located at facilities offering a full range of diagnostic modalities, including but not limited to: ultrasound, nuclear medicine, TCT scanning, radionuclide procedures and conventional diagnostic x-ray. A nuclear medicine facility wishing to participate in P.E.T. evaluation must be a full service facility.
- 3) Board Certified Nuclear Medicine Physician and Radiation Physicist
A) The applicant must have on staff a board certified or board eligible physician specializing in nuclear medicine and a staff physicist with expertise in nuclear medicine to assure the quality and safety of the P.E.T. equipment.

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

B) A "staff radiation physicist" is defined in the Rules of the State Board, as "a person who is a graduate physicist, and is either certified, or eligible for certification, by the American Board of Radiology or its equivalent, or who is a graduate physicist with equivalent training and experienced to that degree required by the American Board of Radiology."

c) Multi-Institutional Systems -- Review Criterion

The applicant must document that the proposed project will result in the establishment of a multi-institutional system with regard to the utilization of Positron Emission Tomographic Scanners. Such documentation may include copies of letters or signed agreements with other facilities stating that those facilities will utilize this equipment by the referral of patients.

d) Location -- Review Criterion

Due to the fact that P.E.T. Scanners are innovative equipment it will be the policy of the State Board that such pieces of equipment be located at an affiliated teaching facility of the State's medical schools in order to evaluate medical efficacy. The applicant must document that the medical school has recommended the institution in which the equipment is to be located. A copy of a letter from the Dean of the appropriate College of Medicine (or his representative) will constitute sufficient documentation.

e) Data Collection -- Review Criteria

1) IDPH The-State-Agency shall collect data from all available sources for purposes of studying the efficacy of this equipment.

2) The applicant must document that it will provide utilization data, clinical data, and reports of clinical efficacy in comparison to other forms of diagnostic modalities as requested by IDPH the-State-Agency. The applicant must also document that it will provide a representative from the institution as a liaison to the State Board for the purposes of data collection. A letter stating that, if approved, the applicant will participate by providing required data, will constitute sufficient documentation.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART W: CATEGORY OF SERVICE REVIEW CRITERIA--EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY

Section 1110.2210 Introduction (Repealed)

Subpart-W-contains-Review-Criteria-which-pertain-to--the--Extracorporeal-Shock-Wave--Lithotripsy--category--of--service--These-review-criteria-are-utilized-in-addition-to-the-"General-Review-Criteria"-outlined-in-Subpart-C-and-any-other-applicable-Review-Criteria-outlined-in-Subparts-B-and-E-

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1110.2220 Extracorporeal Shock Wave Lithotripsy--Definitions (Repealed)

"Extracorporeal-Shock-Wave-Gall-Stone-Lithotripsy"-means-shock-waves-induced-from-outside-the-body-to-destroy-gall-stones-

"Extracorporeal-Shock-Wave-Lithotripsy"-means-a-category-of-service-which-utilizes-shock-waves-induced-from-outside-the-body-to-destroy-kidney-(or-other)-stones-

"Extracorporeal-Shock-Wave-Lithotripters"-are-those-pieces-of-equipment-which-exert-high-pressure-on-kidney-(or-other)-stones-by-means-of-shock-waves-introduced-from-outside-of-the-body-so-that-the-stones-crumble-into-sand-grain-sized-particles-

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

Section 1110.2230 Extracorporeal Shock Wave Lithotripsy--Review Criteria (Repealed)

a) Initial-Introduction-of-Equipment--Review-Criteria

1) It-is-determined-that-approximately-5,000-candidates-for-kidney-stone-extracorporeal-shock-wave-lithotripsy-would-occur-annually. The-Illinois-Health-Facilities-Planning-Board-has-determined-that six-pieces-of-equipment--designed-to-treat-kidney-stones-are sufficient-to-meet-the-needs-of-the-Illinois-population-

b) Location--Review-Criterion

Due-to-the-large-population-needed-to-generate-sufficient-kidney-stone-caseload-for-machine-efficiency--it-is-essential-that-proposed locations-for-kidney-stone-lithotripsy-be-geographically-accessible-to-a-population-group-of-at-least-2-million-persons--in-order-to-achieve accessibility, four-machines-shall-be-located-in-the-Chicago-S-M-S-A-within-the-Chicago-City-limits-and-two-downstate-in-locations-which will-serve-a-population-of--2-million-persons-who-currently-are unserved-by-existing-equipment---An-unserved-population-shall-be considered-those-individuals-who-reside-outside-the-primary-market-area-of-existing-kidney-lithotripter-services-

c) Multi-Institutional-Systems--Review-Criterion

Due-to--the-large-primary-markets-for-equipment-for-both-kidney-stone-and-gall-stone-lithotripsy-services--it-is-essential-that--no restrictions-on-access-be-established-by-the-applicant--The-applicant-proposing-to-acquire-a-lithotripter-must:

1) contact-those-facilities-within-its-primary-market-(a-geographic-area-reflecting-at-least-60-percent-of-all-hospital-admissions

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

utilizing the equipment in an effort to establish formal referral agreements. If such a system cannot be accomplished the applicant must indicate why a multi-institutional system cannot be established and

- 2) contact those facilities which are located within the estimated primary market area of the innovative equipment indicating the availability of the equipment and a contact person to discuss patient admission for the service and
- 3) indicate in writing to the State Agency admission policies for the service procedures for acceptance of referrals and a statement insuring that no restrictive admission policies will be established

d) Staffing-Review-Criterion

The applicant must document the number, type and professional qualifications of all personnel involved with the operation of the equipment. Also, the applicant must document the availability of surgical support for the removal of stones and organ repair.

e) Data-Collection-Review-Criterion

- 1) The State Agency shall collect data from all available sources for purposes of studying the efficacy of this equipment.
- 2) The applicant must document that it will provide utilization data, clinical data and reports of clinical efficacy in comparison to other forms of treatment. The applicant must also document that it will provide a representative from the institution as a liaison to the State Board for purposes of annual data collection. A letter stating that if approved the applicant will participate by providing the required data and representative will constitute sufficient documentation.

(Source: Repealed at 22 Ill. Reg. _____, effective _____)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA--SELECTED ORGAN TRANSPLANTATION

Section 1110.2320 Selected Organ Transplantation--Definitions

- a) The selected organ transplantation service means a category of service relating to the surgical transplantation of any of the following human organs: heart, lung, heart-lung, liver, or pancreas, or intestine and small bowel. It does not include bone marrow or cornea transplants.
- b) A selected organ transplantation center means a hospital which provides staffing and other adult or pediatric medical and surgical specialty services required for the care of a heart-lung-heart/lung/liver or pancreas transplant patient.
- c) "Teaching Institution" for the purpose of this Subpart means a hospital having a major relationship with a medical school as defined and listed in the current "Directory of Residency Training Programs" developed by the American Medical Association, 535 Dearborn, Chicago,

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Illinois 60610 and the National Organ Procurement and Transplantation Network.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 1110.2330 Selected Organ Transplantation--Review Criteria

a) Establishment of a Program -- Review Criterion

- 1) The applicant must document the following:

- A) the applicant is a teaching institution; and
- B) the transplantation program will be performed in conjunction with graduate medical education.

- 2) Documentation shall consist of a written agreement between the applicant and the medical school detailing the relationship of the transplantation program to graduate medical education.

Agency-Note--the applicant must also address the general review criterion on medical education.

- b) Physical Facilities -- Review Criterion. The applicant must document sufficient operating and recovery room resources, intensive care resources and personnel to operate the transplant program as reflected in the norms found in Appendix B of this Part 1110.

- c) Access to Donor Organs -- Review Criterion. The applicant must document access to donor organs. This must be accomplished by membership in the National Organ Procurement and Transplantation Network and in a Regional Organ Procurement Agency.

- d) Recipient Selection -- Review Criterion. The applicant must provide a copy of its procedures for selecting transplant candidates and distribution of organs.

- e) Surgical Staff -- Review Criterion. The applicant must document that the facility has on staff transplant surgeon(s) certified in the applicable specialty and that each has had a minimum of one year of training and experience in transplant surgery, post-operative care, long-term management of organ recipients and the immunosuppressive management of transplant patients. Documentation shall consist of certification by the hospital administrator that the personnel with the appropriate certification and experience are on the hospital staff.

- f) Collaborative Support -- Review Criterion. The applicant must document collaboration with experts in the fields of hepatology, cardiology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, anesthesiology, physical therapy, and rehabilitation medicine. Documentation of collaborate involvement shall include, but not be limited to, a plan of operation detailing the interaction of the transplant program and the stated specialty areas.

- g) Ancillary Services -- Review Criterion. The applicant must document

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

on site access to microbiology, clinical chemistry, radiology, blood bank and resources required to monitor use of immunosuppressive drugs. The applicant must also have access to tissue typing services and be able to provide psychiatric and social counseling for the transplant recipient and for their families.

- h) Data -- Review Criterion. The applicant must document that information on finances (cost and charges) and on graft and patient outcomes will be provided to the Department of Public Health.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART Z: CATEGORY OF SERVICE REVIEW CRITERIA-SUBACUTE CARE HOSPITAL MODEL

Section 1110.2510 Introduction

- a) Subpart Z of this Part contains review criteria which pertain to the subacute care hospital model category of service. The subacute care hospital model category of service is a demonstration program which is authorized by the Alternative Health Care Delivery Act [210 ILCS 31]. These subacute care hospital model review criteria are utilized in addition to the General Review Criteria contained in Subpart C of this Part and in addition to the Financial and Economic Feasibility Review Criteria contained in 77 Ill. Adm. Code Part 1120. This Subpart also contains the methodology the State Board shall utilize in evaluating competing applications, if any, for the establishment of any subacute care hospital models.

- b) A facility at any time may be caring for subacute patients. A permit must be obtained to establish a subacute care hospital model. Existing hospitals and long-term care facilities providing subacute care are not required to obtain a permit provided, however, that the facilities shall not hold themselves out to the public as subacute care hospitals (Section 15 of the Alternative Health Care Delivery Act [210 ILCS 3/15]). Establishment of a subacute care hospital model category of service occurs when a facility holds itself out to the general public as a subacute care hospital. In such instances failure to obtain a permit will result in the application of sanctions as provided for in the Illinois Health Facilities Planning Act (441-Rev-Stat--1991-CH--111-177-par--1151-et-seq) [20 ILCS 3960].

- c) As the purpose of the demonstration project is to evaluate the subacute care hospital model for quality factors, access and the impact on health care costs, each applicant approved for the category of service will be required to periodically submit data necessary for evaluating the model's effectiveness.

- d) Applications received for the subacute care hospital model shall be deemed complete upon receipt by IDPH the State-Agency. Due to the comparative nature of the subacute care hospital model review,

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

applicants will not be allowed to amend the application or provide additional supporting documentation during the review process. The application as submitted to IDPH the State-Agency shall serve as the basis for all standard and prioritization evaluation.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART AA: CATEGORY OF SERVICE REVIEW CRITERIA-POSTSURGICAL RECOVERY CARE CENTER ALTERNATIVE HEALTH CARE MODEL

Section 1110.2610 Introduction

- a) Subpart AA of this Part contains review criteria which pertain to the postsurgical recovery care center alternative health care model category of service. The postsurgical recovery care center alternative health care model category of service is a demonstration program which is authorized by the Alternative Health Care Delivery Act. These postsurgical recovery care center alternative health care model review criteria are utilized in addition to the General Review Criteria contained in Subpart C of this Part and in addition to the Financial and Economic Feasibility Review Criteria contained in 77 Ill. Adm. Code 1120. This Subpart also contains the methodology the State Board shall utilize in evaluating competing applications, if any, for the establishment of any postsurgical recovery care center alternative health care models.

- b) A postsurgical recovery care center alternative health care model must obtain a certificate of need permit to establish the category of service prior to receiving a license for the service. Failure to obtain such permit will result in the application of sanctions as provided for in the Illinois Health Facilities Planning Act (441-Rev-Stat--1991-CH--111-177-par--1151-et-seq) [20 ILCS 3960].

- c) As the purpose of the demonstration project is to evaluate the model for quality factors, access and the impact on health care cost, each applicant approved for the category of service will be required to periodically submit data necessary for evaluating the model's effectiveness. All data requests of this type shall be a component of the semi-annual progress reports required of all permit holders. Data collected shall be provided to the Department of Public Health and the Illinois State Board of Health for use in their evaluation of the model.

- d) Applications received for the postsurgical recovery care center alternative health care model shall be deemed complete upon receipt by the State Agency. All postsurgical recovery care center alternative health care models for the purposes of review shall be considered the establishment of a category of service rather than an addition of beds. Therefore, the 60 day review requirement of 77 Ill. Adm. Code 1130.610(b) for bed projects shall not apply to applications of this

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

type. Due to the comparative nature of the postsurgical recovery care center alternative health care model review applicants will not be allowed to amend the application or provide additional supporting documentation during the review process prior to the initial State Board decision. The application, as submitted to IDPH the-State Agency, shall serve as the basis for all standard and prioritization evaluation.

e) Applications received for the postsurgical recovery care center alternative health care model must be received by IDPH the-State Agency between 8:30 and 5:00 p.m. in accordance with the following schedule. All applications received by IDPH the-State-Agency not in accord with this schedule shall not be accepted and returned to the applicant.

- 1) Projects located in the city of Chicago - May 1-12, 1995;
- 2) Projects located in Cook county outside the city of Chicago - May 1-12, 1995;
- 3) Projects located in Kane, Lake and McHenry counties - May 1-12, 1995;
- 4) Projects located in municipalities as defined in 77 Ill. Adm. Code 1100.750 - June 1-12, 1995;
- 5) Projects located in rural areas as defined in 77 Ill. Adm. Code 1100.750 - June 1-12, 1995.
- 6) If the need for the number of models specified in 77 Ill. Adm. Code 1100.750 has not been met following the completion of State Board review of all applications submitted within the above schedule, the State Board shall not accept subsequent applications for any remaining sites until December 8, 1995.

Agency Note: It is the applicant's responsibility to assure that the application has been received during the prescribed time frames and dates specified.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Section 1110.APPENDIX B State and National Norms on--Square--Footage--by Department

The following norms are established for gross square footage by department and/or utilization of medical equipment. NOTE: Gross Square Footage indicated as gft(2).

Department	State Norms
Acute Mental Illness Beds	586 gft(2)/Bed (Psych)
Admitting	12.9 gft(2)/Bed (Total)
Ambulatory Care	4.1 Clinic Visits/gft(2) or 667 gft(2)/Treatment Room (based upon 2,000 visits per room)
Ambulatory Surgical Treatment Centers	2,750 gft(2)/Treatment Room (based upon 1,500 hours of surgery per room)
Burn Treatment Beds	596 gft(2)/Bed (Burn)
Cafeteria	18 gft(2)/Bed (Total) or 34 meals/gft(2)
Cardiac Catheterization	1,596 gft(2)/Laboratory
Central Sterile Supply	18 gft(2)/Bed (Total)
Conversion of Hosp. Acute Care Beds to Skilled Care	429 gft(2)/Bed (Total)
Diagnostic Radiology Procedures/gft(2)	1,386 gft(2)/Procedure Room or 5.5 (based upon 6,500 procedures/general x-ray room, 2,000 visits per mammography room, 2,000 visits per ultrasound room, 400 procedures per angiography room, and 2,000 visits per special procedures room (computerized tomography, multi-directional tomography, etc.))
Emergency Room	744.6 gft(2)/Treatment Room (based upon 2,000 visits per treatment room per year) or 3.1 Visits gft(2)
Food Service	42 Meals/gft(2) or 54 gft(2)/Bed (Total)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Department	State Norms
<u>Hemodialysis</u>	<u>470 gft(2)/Room</u>
<u>Housekeeping</u>	<u>15.5 gft(2)/Bed (Total)</u>
<u>ICF/DD Facilities - 16 or less</u>	<u>369 gft(2)/Bed (Total)</u>
<u>ICF/DD Facilities Over 16 Beds</u>	<u>564 gft(2)/Bed (Total)</u>
<u>In-service Education</u>	<u>17.0 gft(2)/Bed (Total)</u>
<u>Intensive Care Beds</u>	<u>603 gft(2)/Bed (ICU)</u>
<u>Laboratory (includes blood bank)</u>	<u>225 gft(2)/Full-Time Equivalent or 36 gft(2)/Bed (Total)</u>
<u>Labor-Delivery-Recovery</u>	<u>23 gft(2)/Bed or 4.6 gft(2)/Procedure or 1975 gft(2)/Needed Delivery Room (based upon 750 Live Births/Delivery Room)</u>
<u>Laundry</u>	<u>22 gft(2)/Bed (Total)</u>
<u>LDRP</u>	<u>1,119 gft(2)/Bed</u>
<u>Maintenance</u>	<u>12.9 gft(2)/Bed (Total)</u>
<u>Medical-Surgical Beds</u>	<u>401 gft(2)/Bed (M-S)</u>
<u>Morgue</u>	<u>3.0 gft(2)/Bed (Total)</u>
<u>MRI</u>	<u>3,400 gft(2)/unit (2,000 visits per MRI)</u>
<u>Neonatal-High Risk Beds</u>	<u>355 gft(2)/Bed (Neo)</u>
<u>Newborn Nursery</u>	<u>152 gft(2)/Bed (Obstetrics)</u>
<u>Nuclear Medicine</u>	<u>2.9 Procedures/gft(2) or 1,135 gft(2)/Treatment Room or 11.7 gft(2)/Bed (Total) based upon 2,000 visits per piece of equipment</u>
<u>Nursing Care Facilities</u>	<u>414 gft(2)/Bed (Total)</u>

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

Department	State Norms
<u>Obstetric Beds</u>	<u>476 gft(2)/Bed (OB)</u>
<u>Occupational Therapy</u>	<u>4.3 gft(2)/Bed (Total less ICU and OB)</u>
<u>Pediatric Beds</u>	<u>420 gft(2)/Bed (Ped)</u>
<u>Pharmacy</u>	<u>12.0 gft(2)/Bed (Total)</u>
<u>Physical Therapy</u>	<u>7.5 Treatments/gft(2) or 23 gft(2)/Bed (M-S, Peds, Rehab, Burn and LTC)</u>
<u>Radiation Therapy</u>	<u>1.1 Treatments/gft(2)</u>
<u>(Megavoltage Equipment)</u>	<u>(300 treatment courses per year)</u>
<u>Recovery (Surgical)</u>	<u>180 gft(2)/Recovery Station (based upon maximum of 4 stations per needed operating room)</u>
<u>Rehabilitation Beds</u>	<u>588 gft(2)/Bed (Rehab)</u>
<u>Respiratory Therapy</u>	<u>20.5 Procedures/gft(2) or 8.9 gft(2)/Bed</u>
<u>Sheltered Care Facilities</u>	<u>585 gft(2)/Bed (Total)</u>
<u>Social Services</u>	<u>4.5 gft(2)/Bed (Total)</u>
<u>Speech Pathology/Audiology</u>	<u>1.8 gft(2)/Bed (Total)</u>
<u>Storage</u>	<u>33 gft(2)/Bed (Total)</u>
<u>Substance Abuse Beds</u>	<u>466 gft(2)/Bed</u>
<u>Surgery</u>	<u>2,078 gft(2)/Surgical Room (based upon 1,500 hours of surgery per operating room per year)</u>
1- <u>Surgery</u>	<u>2078--gft(2)/Surgical-Room</u>
2- <u>Recovery-(Surgical)</u>	<u>180--gft(2)/Recovery-Station</u>
3- <u>Laboratory---(includes---blood bank)</u>	<u>225-----gft(2)/Full-Time Equivalent---or---36---gft(2)/Bed (Total)</u>
4- <u>Morgue</u>	<u>3-0--gft(2)/Bed-(Total)</u>

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

5-	Diagnostic-Radiology	1386---Procedure--Room--or-5-5 Procedures/gft(2)
6-	Intensive-Care-Beds	683--gft(2)/Bed-(x80)
7-	Burn-Beds	596-gft(2)/Bed-(Burn)
8-	Pediatric-Beds	420--gft(2)/Bed-(Ped+)
9-	Obstetric-Beds	476--gft(2)/Bed-(OB)
10-	Medical-Surgical-Beds	481--gft(2)/Bed-(M-S)
11-	Acute-Mental-Illness-Beds	586--gft(2)/Bed-(Psych)
12-	Neonatal-High-Risk-Beds	355--gft(2)/Bed-(Neo+)
13-	Substance-Abuse-Beds	466--gft(2)/Bed-(Alc+)
14-	Rehabilitation-Beds	588--gft(2)/Bed-(Rehab)
15-	Labor-Delivery-Recovery	23-----gft(2)/Bed-----4-6 gft(2)/Procedure-----or-----1975 gft(2)/Needed---Delivery---Room (BASEB)-----upon-----758-----Five Births/Delivery-Room)
16-	Food-Service	42-----Meals/gft(2)-----or-----54 gft(2)/Bed-(Total)
17-	Pharmacy	12-8-gft(2)/Bed-(Total)
18-	BBRP	1719-gft(2)/Bed
19-	Storage	33--gft(2)/Bed-(Total)
20-	Physical-Therapy	7-5-----Treatments/gft(2)---or---23 gft(2)/Bed--(M-S)--Peds+Rehab Burn-and-B80)
21-	Respiratory-Therapy	20-5-Procedures/gft(2)---or---8-9 gft(2)/Bed--(Total)---less---Acute Mental-Illness)
22-	Occupational-Therapy	4-3--gft(2)/Bed-(Total)---less---80 and-80)
23-	Nuclear-Medicine	2-9--Procedures/gft(2)---or---17135 gft(2)/Treatment--Room--or---117 gft(2)/Bed-(Total)
24-	Housekeeping	15-5--gft(2)/Bed-(Total)
25-	Central-Sterile-Supply	18-gft(2)/Bed-(Total)
26-	Radiation-Therapy	2-7--Treatments/gft(2)
27-	Cardiac-Catheterization	1596--gft(2)/Laboratory
28-	Ambulatory-Care	4-1---02111111--Visits/gft(2)---or 667-gft(2)/Treatment-Room
29-	MRI	37488-gft(2)/unit
30-	Newborn-Nursery	152-gft(2)/Bed-(Obstetrics)---or
31-	Social-Services	4-5--gft(2)/Bed-(Total)
32-	Maintenance	12-9--gft(2)/Bed-(Total)
33-	Cafeteria	18--gft(2)/Bed--(Total)---or---34 meals/gft(2)
34-	Laundry	22-gft(2)/Bed-(Total)
35-	Emergency-Room	744-6---gft(2)/Treatment---Room 3-1-Visits-gft(2)
36-	Ambulatory--Surgical--Treatment Centers	27758--gft(2)/Treatment-Room
37-	Hemodialysis	27478--gft(2)/Room
38-	Admitting	12-9--gft(2)/Bed-(Total)
39-	Speech-Pathology/Audiology	1-8-gft(2)/Bed-(Total)
40-	Conversion--of--Hosp--Acute-Care Beds-to-Skilled-Care	429--gft(2)/Bed-(Total)
41-	In-service-Education	17-8--gft(2)/Bed-(Total)
42-	ICP/BB-Facilities---16---Beds-or Beds	369--gft(2)/Bed-(Total)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

HEALTH FACILITIES PLANNING BOARD

NOTICE OF PROPOSED AMENDMENT

- 43- ~~EF/BB--Facilities~~----~~Over~~----16 564--~~gft(2)/Bed~~-(~~Total~~)
Beds}
- 44- New-BRC-Facilities 414--~~gft(2)/Bed~~-(~~Total~~)

*Surgical visits and obstetric procedures.
The State Board shall periodically evaluate the norms to determine if revisions should be made. Any revisions shall be promulgated in accordance with the provisions of the Illinois Administrative Procedure Act [45 ILCS 100].

(Source: Amended at 22 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) Section Numbers: Proposed Action:
120.10 Amendment
120.347 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: The Department is proposing two sets of amendments to the Department's rules concerning eligibility for medical assistance in Part 120. The first set of amendments responds to the ruling of an Illinois appellate court case, *Jacobson v. IDPA*, that determined the Department has no legal authority to establish or enforce parental liability for children after age 18 who are living at home. According to the Department's current rules, parents bear legal financial responsibility for children in the home who are age 18 through 20. These proposed amendments to Section 120.10 are intended to clarify the extent to which children must be included in the Medical Assistance standard. Several other technical changes are also being proposed to Section 120.10. Companion amendments are being filed at 89 Ill. Adm. Code 103.10. Support from Responsible Relatives, which specifically eliminate parental financial responsibility for children age 18 through 20 who are living with the parents.

Amendments to Section 120.347 are being proposed to provide clarifications on the treatment of irrevocable trusts. Subsection (d)(1), which deals with non-pooled trusts established for disabled persons, requires that if a trust contains proceeds from a personal injury settlement, any Department charges must be satisfied in order for the trust to be excluded as an available asset in determining eligibility for medical assistance. Similar proposed language is now being added to subsection (d)(2) regarding irrevocable trusts that are established and managed by a non-profit association that pools funds but maintains a separate account for each beneficiary. Such a trust may be created by the disabled person. The Department is initiating these changes in the wake of a recent Illinois appellate court case that concluded the Department is first entitled to payment of the lien for Medicaid reimbursements from the proceeds of a personal injury settlement, leaving any remaining proceeds available for transfer to a trust.

The proposed amendments to Sections 120.10 and 120.347 are not expected to result in any budgetary changes for the Department.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) Time, Place, and Manner in which Interested Persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones
Bureau of Rules and Regulations
Illinois Department of Public Aid
201 South Grand Ave. E
3rd Floor
Springfield Illinois 62763
Telephone: 217/524-3215

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998
- The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER b: ASSISTANCE PROGRAMSPART 120
MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section
120.1 Incorporation By Reference

SUBPART B: ASSISTANCE STANDARDS

Section
120.10 Eligibility For Medical Assistance
120.11 MANG(P) Eligibility
120.12 Healthy Start - Medicaid Presumptive Eligibility Program For Pregnant Women
120.20 MANG(AABD) Income Standard
120.30 MANG(C) Income Standard
120.31 MANG(P) Income Standard
120.40 Exceptions To Use Of MANG Income Standard
120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section
120.60 All Cases Other Than Intermediate Care, Skilled Nursing Care, DHS Facilities, DHS Approved Community Based Settings and Pregnant Women and Children Under Age 19 Who Do Not Qualify As Mandatory Categorically Needy
120.61 Cases in Intermediate Care, Skilled Nursing Care and DMHDD - MANG(AABD) and All Other Licensed Medical Facilities
120.62 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings Under 89 Ill. Adm. Code 140.643
120.63 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings
120.64 MANG(P) Cases
120.65 Department of Mental Health and Developmental Disabilities (DMHDD) Licensed Community - Integrated Living Arrangements

SUBPART D: SUPPLEMENTARY MEDICAL INSURANCE

Section
120.70 Supplementary Medical Insurance Benefits (SMIB) Buy-In Program
120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

120.73 Beneficiary (QMB)
Eligibility for Medical Payment of Medicare Part B Premiums as a Specified Low-Income Medicare Beneficiary (SLIB)
120.74 Qualified Medicare Beneficiary (QMB) Income Standard
120.75 Specified Low-Income Medicare Beneficiary (SLIB) Income Standards
120.76 Hospital Insurance Benefits (HIB)

SUBPART E: RECIPIENT RESTRICTION PROGRAM

Section
120.80 Recipient Restriction Program

SUBPART F: MIGRANT MEDICAL PROGRAM

Section
120.90 Migrant Medical Program
120.91 Income Standards

SUBPART G: AID TO THE MEDICALLY INDIGENT

Section
120.200 Elimination of Aid to The Medically Indigent
120.208 Client Cooperation (Repealed)
120.210 Citizenship (Repealed)
120.211 Residence (Repealed)
120.212 Age (Repealed)
120.215 Relationship (Repealed)
120.216 Living Arrangement (Repealed)
120.217 Supplemental Payments (Repealed)
120.218 Institutional Status (Repealed)
120.224 Foster Care Program (Repealed)
120.225 Social Security Numbers (Repealed)
120.230 Unearned Income (Repealed)
120.235 Exempt Unearned Income (Repealed)
120.236 Education Benefits (Repealed)
120.240 Unearned Income In-Kind (Repealed)
120.245 Earmarked Income (Repealed)
120.250 Lump Sum Payments and Income Tax Refunds (Repealed)
120.255 Protected Income (Repealed)
120.260 Earned Income (Repealed)
120.261 Budgeting Earned Income (Repealed)
120.262 Exempt Earned Income (Repealed)
120.270 Recognized Employment Expenses (Repealed)
120.271 Income From Work/Study/Training Program (Repealed)
120.272 Earned Income From Self-Employment (Repealed)
120.273 Earned Income From Roomer and Boarder (Repealed)
120.275 Earned Income In-Kind (Repealed)
120.276 Payments from the Illinois Department of Children and Family Services

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

(Repealed)
 Assets (Repealed)
 120.280 Exempt Assets (Repealed)
 120.281 Asset Disregards (Repealed)
 120.282 Deferral of Consideration of Assets (Repealed)
 120.283 Spend-down of Assets (AMI) (Repealed)
 120.284 Property Transfers (Repealed)
 120.285 Persons Who May Be Included in the Assistance Unit (Repealed)
 120.290 Payment Levels for AMI (Repealed)
 120.295

SUBPART H: MEDICAL ASSISTANCE - NO GRANT

Client Cooperation
 120.308 Caretaker Relative
 120.309 Citizenship
 120.310 Residence
 120.311 Age
 120.312 Blind
 120.313 Disabled
 120.314 Relationship
 120.315 Living Arrangements
 120.316 Supplemental Payments
 120.317 Institutional Status
 120.318 Assignment of Rights to Medical Support and Collection of Payment
 120.319 Cooperation in Establishing Paternity and Obtaining Medical Support
 120.320 Good Cause for Failure to Cooperate in Establishing Paternity and
 120.321 Obtaining Medical Support
 120.322 Proof of Good Cause for Failure to Cooperate in Establishing
 120.323 Paternity and Obtaining Medical Support
 120.324 Suspension of Paternity Establishment and Obtaining Medical Support
 120.325 Upon Finding Good Cause
 120.326 Health Insurance Premium Payment (HIPP) Program
 120.327 Health Insurance Premium Payment (HIPP) Pilot Program
 120.328 Foster Care Program
 120.329 Social Security Numbers
 120.330 Unearned Income
 120.331 Budgeting Unearned Income
 120.332 Exempt Unearned Income
 120.333 Education Benefits
 120.334 Incentive Allowance
 120.335 Unearned Income In-Kind
 120.336 Court Ordered Child Support Payments of Parent/Step-Parent
 120.337 Earmarked Income
 120.338 Medicaid Qualifying Trusts
 120.339 Treatment of Trusts
 120.340 Lump Sum Payments and Income Tax Refunds
 120.341 Protected Income

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

Earned Income
 120.360 Budgeting Earned Income
 120.361 Exempt Earned Income
 120.362 Earned Income Disregard - MANG(C)
 120.363 Earned Income Exemption
 120.364 Exclusion From Earned Income Exemption
 120.366 Recognized Employment Expenses
 120.370 Income From Work/Study/Training Programs
 120.371 Earned Income From Self-Employment
 120.372 Earned Income From Roomer and Boarder
 120.373 Payments from the Illinois Department of Children and Family Services
 120.375 Provisions for the Prevention of Spousal Impoverishment
 120.376 Assets
 120.378 Exempt Assets
 120.381 Asset Disregard
 120.382 Deferral of Consideration of Assets
 120.383 Spend-down of Assets (MANG)
 120.384 Property Transfers for Applications Filed Prior to October 1, 1989
 120.385 (Repealed)
 120.386 Property Transfers Occurring On or Before August 10, 1993
 120.387 Property Transfers Occurring On or After August 11, 1993
 120.390 Persons Who May Be Included In the Assistance Unit
 120.391 Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG and
 120.392 Children Born October 1, 1983, or Later (MANG(P) Program)
 120.393 Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The
 120.394 Child Were Already Born Or Who Do Not Qualify As Mandatory
 120.395 Categorically Needy
 120.396 Pregnant Women and Children Under Age Eight Years Who Do Not Qualify
 120.397 As Mandatory Categorically Needy Demonstration Project
 120.398 Payment Levels for MANG (Repealed)
 120.399 Redetermination of Eligibility

TABLE A Value of a Life Estate and Remainder Interest
 TABLE B Life Expectancy

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill.

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; peremptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11773, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. _____, effective _____.

SUBPART B: ASSISTANCE STANDARDS

Section 120.10 Eligibility For Medical Assistance

- a) Eligibility for Medical Assistance exists when a client meets the non-financial requirements of the program and the client's countable nonexempt income (Sections 120.330 and 120.360 ~~§§ 30-35 and 120-342~~) is equal to or less than the applicable Medical Assistance - No Grant (MANG) or ~~aid to the elderly-indigent~~ ~~(MANG)~~ Standard ~~(Sections 120-28 and 120-56)~~ and countable nonexempt ~~non-exempt~~ assets are not in excess of the applicable asset disregards (Section 120.380 ~~Sections 120-282 and 120-382~~).
- b) The client's countable income and assets include the client's nonexempt income and the nonexempt income and assets of all persons included in the Medical Assistance Standard. The client's responsible

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

relative(s) living with the client must be included in the Standard. The client has the option to request that a dependent child under age 18 in the home who is not included in the MANG unit be included in the MANG Standard.

- c) ~~b)~~ If the client's countable nonexempt income is greater than the applicable MANG ~~or AMI~~ Standard and/or countable nonexempt ~~non-exempt~~ assets are over the applicable asset disregard, the client must meet the spend-down obligation determined for the applicable time period before becoming eligible to receive Medical Assistance.
- d) ~~c)~~ A one month eligibility period is used for clients receiving care in an intermediate care facility intermediate (ICF) or skilled nursing facility ~~Skilled-Nursing-Care-Facility~~ (SNF) or in a Department of Human Services ~~Department---of---Health---and---Development~~ ~~Disabilities---(DMHBB)~~ Facility. Nonexempt income and nonexempt ~~non-exempt~~ assets over the asset disregard are applied toward the cost of care on a monthly basis.

e) ~~d)~~ Newborns

- 1) When the Department becomes aware of the birth of a child to a recipient of a TANF (Temporary Assistance for Needy Families) or medical APBE or AABD grant or related medical assistance or medical assistance due to the mother's pregnancy, the child shall be deemed to have applied for medical assistance only, without written request, subject to the following conditions:

- A) The mother must have been receiving TANF APBE or AABD related medical assistance, or medical assistance due to her pregnancy on the date of birth of the child;
- B) The mother must have been continuously eligible for such medical assistance.

- 2) The newborn shall be eligible to receive medical assistance only from the date of birth for up to one year or until the mother becomes ineligible for medical assistance, whichever comes first. The newborn can be added to the grant or medical assistance case, if otherwise eligible, through regular procedures by written request at any time.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART H: MEDICAL ASSISTANCE - NO GRANT

Section 120.347 Treatment of Trusts

- a) This Section applies to trusts established on or after August 11, 1993.
- b) A trust is any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed or administered by the trustee or trustees for the benefit of the grantor or designated beneficiaries. A trust also includes any legal

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

c) instrument or device that is similar to a trust, including an annuity. A person shall be considered to have established a trust if assets of the person were used to form all or part of the principal of the trust and the trust is established (other than by will) by any of the following:

- 1) the person;
- 2) the person's spouse; or
- 3) any other person, including a court or administrative body, with legal authority to act on behalf of or at the direction of the person or the person's spouse.

d) This Section does not apply to the following trusts:

- 1) an irrevocable trust containing assets of a disabled person (as described in Section 120.314) under age 65 that is established by a parent, grandparent, legal guardian or court for the benefit of the disabled person, if language contained in the trust stipulates that any amount remaining in the trust (up to the amount expended by the Department on medical assistance) shall be paid to the Department upon the death of the person. This exclusion continues after the person reaches age 65 as long as the person continues to be disabled but any additions made by the person to the trust after age 65 will be treated as a transfer of assets under Section 89-111-Adm-Code 120.387. If the trust contains proceeds from a personal injury settlement, any Department charge (as described at 89 Ill. Adm. Code 102.260) must be satisfied in order for the trust to be excluded under this subsection; or

- 2) an irrevocable trust containing assets of a disabled person (as described in Section 120.314) that is established and managed by a non-profit association that pools funds but maintains a separate account for each beneficiary that is established by the disabled person, a parent, grandparent, legal guardian or court for the benefit of the disabled person, if language contained in the trust stipulates that any amount remaining in the trust (up to the amount expended by the Department on medical assistance) that is not retained by the Department shall be paid to the Department upon the death of the person. If the trust contains proceeds from a personal injury settlement, any Department charge (as described at 89 Ill. Adm. Code 102.260) must be satisfied in order for the trust to be excluded under this subsection (d).

e) Subsections (f) and (g) of this Section below apply to the portion of the trust attributable to the person and without regard to:

- 1) the purpose for establishment of the trust;
 - 2) whether the trustee has or exercises any discretion under the trust; or
 - 3) whether there are any restrictions on distributions or use of distributions from the trust.
- f) For revocable trusts, the Department shall:
- 1) treat the principal as an available asset;

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 2) treat as income payments from the trust that are made to or for the benefit of the person; and
 - 3) treat any other payments from the trust as transfers of assets by the person (subject to the provisions of Section 120.387).
- g) For irrevocable trusts, the Department shall:
- 1) treat as an available asset the amount of the trust from which payment to or for the benefit of the person could be made;
 - 2) treat as income payments from the trust that are made to or for the benefit of the person;
 - 3) treat any other payments from the trust as transfers of assets by the person (subject to the provisions of Section 120.387); and
 - 4) treat as a transfer of assets by the person the amount of the trust from which no payment could be made to the person under any circumstances (subject to the provisions of Section 120.387).
- The date of the transfer is the date the trust was established or, if later, the date that payment to the person was foreclosed. The amount of the trust is determined by including any payments made from the trust after the date that payment to the person was foreclosed.

(Source: Amended at 22 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Support Responsibility of Relatives

2) Code Citation: 89 Ill. Adm. Code 103

3) Section Numbers: 103.10
Proposed Action: Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Complete Description of the Subjects and Issues Involved: These proposed amendments respond to the ruling of an Illinois appellate court case, *Jacobson v. IDPA*, that determined the Department has no legal authority to establish or enforce parental liability for children after age 18 who are living at home. According to the Department's current rules, parents bear legal financial responsibility for children in the home who are age 18 through 20. These proposed changes specifically eliminate parental financial responsibility for such children. Companion amendments are being filed at 89 Ill. Adm. Code 120.10, to clarify the extent to which children must be included in the Medical Assistance standard. These proposed amendments are not expected to result in any budgetary changes for the Department.

6) Will these proposed amendments replace emergency amendments currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

11) Time, Place, and Manner in which Interested Persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones
Bureau of Rules and Regulations
Illinois Department of Public Aid
201 South Grand Ave. E., 3rd Floor
Springfield, IL 62763
217/524-3215

The Department requests the submission of written comments within 30 days

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking was inadvertently omitted when the most recent regulatory agenda was published.

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER a: GENERAL PROVISIONS

PART 103
SUPPORT RESPONSIBILITY OF RELATIVES

Section

- 103.1 Incorporation By Reference
103.10 Support From Responsible Relatives
103.20 Determination Of Ability To Support
103.25 Establishment of Support Obligations
103.30 Redetermination of Ability To Support
103.35 Enforcement of Administrative Support Orders
103.40 Failure or Refusal to Provide Information Regarding Ability to Support
103.50 Modification or Release From Support Order
TABLE A Standard for Determining Responsible Relative Liability

AUTHORITY: Implementing and authorized by Article X of the Illinois Public Aid Code (305 ILCS 5/Art. X).

SOURCE: Filed and effective December 30, 1977; amended at 3 Ill. Reg. 41, p. 171, effective October 1, 1979; amended at 6 Ill. Reg. 7441, effective June 16, 1982; codified at 7 Ill. Reg. 6493; amended at 10 Ill. Reg. 21898, effective December 12, 1986; amended at 11 Ill. Reg. 6493, effective March 27, 1987; amended at 12 Ill. Reg. 14681, effective August 31, 1988; amended at 13 Ill. Reg. 2496, effective February 14, 1989; amended at 13 Ill. Reg. 3954, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 16180, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 6395, effective April 16, 1990; amended at 14 Ill. Reg. 13288, effective August 6, 1990; amended at 14 Ill. Reg. 19348, effective November 30, 1990; amended at 17 Ill. Reg. 655, effective December 31, 1992; amended at 22 Ill. Reg. _____, effective _____.

Section 103.10 Support From Responsible Relatives

- a) The Department shall seek to obtain support for recipients from legally responsible individuals and shall seek the enforcement of support obligations with the following exception:
the Department shall not seek to obtain support for residents of long term care facilities if income of the spouse in the community is less than or equal to the Community Spouse Maintenance Needs Standard (as described at 89 Ill. Adm. Code 120.61).
- b) The following persons are "responsible relatives" who are legally responsible for the financial support and maintenance of recipients:
1) Spouse for spouse.
2) Parents for children under 18 years of age.

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 3) ~~Parents-of-children-age-18-through-28-if-living-with-the-parents-~~
c) Responsible relatives who are receiving public assistance and/or Supplemental Security Income (SSI) benefits shall be considered unable to support.

- d) A parent is not legally responsible for the financial support and maintenance of a child of any age who has married (regardless of current marital status) and is not living with the parent or parents.

(Source: Amended at 22 Ill. Reg. _____, effective _____.)

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System

2) Code Citation: 80 Ill. Adm. Code 1650

3) Section Numbers: Proposed Action:
1650.356 New

4) Statutory Authority: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code [26 U.S.C. 1]; Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

5) A Complete Description of the Subjects and Issues Involved: Public Act 90-448, in part, amended Sections 16-152.1 and 16-154 of the Pension Code (40 ILCS 5/16-152.1, 16-154) to allow the "pick up" of optional contributions which are made through an irrevocable payroll deduction authorization, effective July 1, 1998. This rule implements the amendments in a manner consistent with the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986, as amended, and the most recent interpretations of that Section issued by the Internal Revenue Service. Section 414(h)(2) is the federal requirement for a pick up arrangement.

6) Will this proposed amendment replace an emergency amendment currently in effect? Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Not Applicable

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed amendment may be submitted in writing for a period of 45 days following publication of this Notice to:

Carl Mowery, General Counsel
Teachers' Retirement System
2815 West Washington, P. O. Box 19253
Springfield IL 62794-9253
(217) 753-0961

12) Initial Regulatory Flexibility Analysis: These rules will not affect small businesses.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998
The full text of the Proposed Amendments is identical to the text of the Emergency Amendments that appear on page 9259 of this edition of the Illinois Register.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Payment of Eligible Claims of Soil and Water Conservation District Employees Unpaid by Mid-Continent Medical Benefit Trust
- 2) Code Citation: 8 Ill. Adm. Code 755
- 3) Section Numbers:
- | | |
|---------------|------------------------|
| 755.10 | <u>Adopted Action:</u> |
| 755.20 | New Section |
| 755.30 | New Section |
| 755.40 | New Section |
| 755.50 | New Section |
| 755.60 | New Section |
| 755.EXHIBIT A | New Section |
- 4) Statutory Authority: Section 6(11) of the Soil and Water Conservation Districts Act [70 ILCS 405] (see P.A. 90-565, effective January 2, 1998)
- 5) Effective Date of Rules: May 19, 1998
- 6) Does this rulemaking contain an automatic repeal date? No; however, P.A. 90-565 contains an automatic repeal date of September 1, 1998.
- 7) Does this proposed rule contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: May 14, 1998
- 9) Notices of Proposal Published in Illinois Register: January 23, 1998, 22 Ill. Reg. 2005
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Differences between proposal and final version: Nonsubstantive editorial corrections have been made. In Section 755.EXHIBIT A, Department employees' names have been deleted and replaced with "Bureau Chief, Bureau of Land and Water Resources". Contract effective dates and proposal due date have been deleted and replaced with blank lines.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rule replace an emergency rule in effect? Yes (22 Ill. Reg. 2289, January 23, 1998)
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: Effective January 2, 1998, P.A. 90-565 amended the Soil and Water Conservation Districts Act by adding Section

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

6(11). Section 6(11) authorizes the Department to pay eligible outstanding health care costs of Soil and Water Conservation District employees incurred between January 1, 1996 and December 31, 1996 that have not been paid by the District's insurance carrier, Mid-Continent Medical Benefit Trust. Claims had to be filed with the Department on or before January 30, 1998 to be considered for payment.

- 16) Information and questions regarding this adopted rule shall be directed to:

Debbie Wakefield
Illinois Department of Agriculture
State Fairgrounds, P.O. Box 19281
Springfield, IL 62794-9281
217/785-5713
Facsimile: 217/785-4505

The full text of Adopted Rules begins on the next page:

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

TITLE 8: AGRICULTURE AND ANIMALS
 CHAPTER 1: DEPARTMENT OF AGRICULTURE
 SUBCHAPTER 9: SOIL AND WATER CONSERVATION

PART 755
 PAYMENT OF ELIGIBLE CLAIMS OF SOIL AND WATER CONSERVATION
 DISTRICT EMPLOYEES UNPAID BY MID-CONTINENT MEDICAL BENEFIT TRUST

Section	Preamble
755.10	Definitions
755.20	Validity of Claims
755.30	Procedures for Requesting Payment of Outstanding Costs
755.40	Claims Processing
755.50	Payment by the Department
755.60	Request for Proposal
755.EXHIBIT A	Request for Proposal

AUTHORITY: Implementing Section 6(11) of the Soil and Water Conservation Districts Act [70 ILCS 405] (see P.A. 90-565, effective January 2, 1998).

SOURCE: Adopted by emergency rule at 22 Ill. Reg. 2289, effective January 8, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 9261, effective MAY 19 1998.

Section 755.10 Preamble

The intent of Section 6(11) of the Soil and Water Conservation Districts Act [70 ILCS 405/6(11)] is to authorize the Illinois Department of Agriculture to pay health care costs of Soil and Water Conservation District employees incurred between January 1, 1996 and December 31, 1996 that were eligible for reimbursement from the District's insurance carrier, Mid-Continent Medical Benefit Trust, but were not paid by the carrier.

Section 755.20 Definitions

"Administrator" means the professional third-party claims administrator chosen by the Department based on the criteria set forth in this Part to collect claims information and supporting documentation, and to provide recommendations to the Department.

"Claim" means a request to the Department for payment of outstanding health care costs not previously reimbursed by Mid-Continent.

"Department" means the Illinois Department of Agriculture.

"District" means one of the Soil and Water Conservation Districts of Illinois.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

"Eligible Period" means the time period from January 1, 1996 through December 31, 1996.

"Employee" means a person who was employed by a Soil and Water Conservation District during the twelve month period from January 1, 1996 through December 31, 1996.

"Mid-Continent" means Mid-Continent Medical Benefit Trust, the District's insurance carrier during the eligible period.

"Outstanding Costs" means those health care costs for which employees were eligible for reimbursement from Mid-Continent, but which were not paid by Mid-Continent.

"Provider" means any person or entity that provided health care services or products to an employee during the eligible period.

"Valid Claim" means a claim that is verified and adjudged by the Department to be eligible for reimbursement.

Section 755.30 Validity of Claims

a) For a claim to be adjudged valid, the employee shall submit documentation required by the Department which proves to the satisfaction of the Department that:

- 1) The employee was covered by the District health insurance program offered through Mid-Continent during the eligible period;
 - 2) The health care for which payment is requested was provided during the eligible period;
 - 3) The health care costs claimed were eligible costs.
- b) The Department shall verify eligible costs claimed and shall determine the validity of all claims based on the recommendation of the Administrator. The Department may reject all or portions of claims.
- c) Claims must have been submitted on or before Friday, January 30, 1998. Claims received after the close of business on January 30, 1998 will not be eligible for consideration.

Section 755.40 Procedures for Requesting Payment of Outstanding Costs

a) Employees shall submit claims on forms provided by the Department. Employees shall provide documentation of:

- 1) their policy's deductible amount and the amount of any payments applied toward it;
- 2) the name, address, and telephone number of each provider for which outstanding costs are claimed;
- 3) all outstanding costs claimed, including the date of service, patient account number, services provided and charges assessed;
- 4) all payments made to providers or collection agencies against

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

outstanding costs and the source of those payments; for example, the employee, secondary insurers, the Districts, other persons, etc.; and

- 5) the amount of eligible costs, if any, which have been forgiven by the provider.
- b) Documentation acceptable to the Department shall include, but is not limited to, original provider bills, canceled checks, payment receipts, balance due statements, statements of benefits from Mid-Continent, and correspondence from providers, Mid-Continent or other relevant sources.

Section 755.50 Claims Processing

- a) In order to provide for the accurate and timely processing of claims, the Department will secure the services of a professional administrator. The Administrator will be selected based on criteria elaborated in Exhibit A of this Part including:
 - 1) qualifications;
 - 2) ability to perform vendor responsibilities;
 - 3) technical capabilities;
 - 4) certifications; and
 - 5) cost.
- b) All claims and supporting documentation will be verified by the Administrator. The Administrator may request from employees any additional documentation the Administrator deems necessary to process and verify claims. The Department will determine the validity of claims based upon recommendations from the Administrator.

Section 755.60 Payment by the Department

- a) Before issuing payment for valid claims, the Department shall require the payee and the employee, if the two are not the same, to sign and submit:
 - 1) a subrogation agreement. The agreement will be provided by the Department and will assign to the Department the proceeds of any future recovery action that may be initiated regarding the claims being paid; and
 - 2) a release acknowledging payment in full and releasing the Department from any future responsibility to pay.
- b) Upon receipt of all signed agreements, the Department will issue a payment voucher for the amount of approved outstanding costs.
- c) The Department will not pay any interest, late fees or similar penalties charged to the employee by any provider or credit agency.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

Section 755. EXHIBIT A Request for Proposal

THE STATE OF ILLINOIS DEPARTMENT OF AGRICULTURE IS REQUESTING PROPOSALS TO FILL THE STATE'S NEEDS AS OUTLINED BELOW. PLEASE READ THIS ENTIRE PACKAGE AND SUBMIT PROPOSAL IN ACCORDANCE WITH THESE INSTRUCTIONS.

DESCRIPTION OF GOODS OR SERVICES

PROFESSIONAL ADVICE AND CLAIMS ADJUDICATION RECOMMENDATIONS FOR THE PAYMENT OF OUTSTANDING HEALTH CARE COSTS OF SOIL AND WATER CONSERVATION DISTRICT EMPLOYEES THAT WERE ELIGIBLE FOR REIMBURSEMENT FROM THE DISTRICTS' INSURANCE CARRIER, MID-CONTINENT MEDICAL BENEFIT TRUST.

SEND PROPOSALS TO:

IDENTIFY PROPOSAL AS:

ILLINOIS DEPARTMENT OF AGRICULTURE
CHIEF, BUREAU OF LAND AND WATER RESOURCES
STATE FAIRGROUNDS
P.O. BOX 19281
SPRINGFIELD, ILLINOIS 62794-9281

CLAIMS ADJUDICATION PROPOSAL

PROJECT CONTACT:

CHIEF, BUREAU OF LAND AND WATER RESOURCES
PHONE: 217-782-2172
TDD: 1-800-524-6858

SUBMIT A SIGNED ORIGINAL AND 3 COPIES OF YOUR PROPOSAL IN A SEALED CONTAINER.

PROPOSAL DUE _____

This package consists of: Instructions; General Information; Basic Contract Terms and Conditions; Detailed Specifications; Technical Proposal; Intent to Propose.

EFFECTIVE IMPLEMENTATION DATE IS IMMEDIATE UPON SELECTION.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

REQUEST FOR PROPOSAL

Claims Adjudication Services
for

Payment of Outstanding Health Care Costs

Administered by

Illinois Department of Agriculture

Issued by

State of Illinois
Illinois Department of Agriculture
Bureau of Land and Water Resources

Becky Doyle

Director

TABLE OF CONTENTS

Section I
Bidding Process

Section II
Contract Terms and Conditions

Section III
Minimum Qualifications

Section IV
Background

Section V
Department and Vendor Responsibilities

Section VI
Technical Proposal

Section VII
Proposal Submittal Requirements

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

Section VIII
Certifications

CLAIMS ADJUDICATION PROPOSAL

Section I
Bidding Process

1.1 Type of Process

In the RFP process the Department intends to make an award to the responsible Vendor(s) whose proposal is determined to provide the best value to the Department. The Department's needs are well defined, and the responses will be evaluated in accordance with predetermined criteria. Although the evaluation may result in a need to clarify proposals or to request "best and finals" from those in the zone of contention, the proposal as submitted will generally be the basis upon which a decision to award is made.

A response to this RFP will be referred to as a proposal.

1.2 Submission of Proposals

The date, time and address for submitting proposals are shown on the instructions page. Please follow these directions carefully. Failure to comply is cause for rejection of the proposal.

Proposals, including amendments, may be mailed or hand delivered; but in either case, must be actually received as specified. Proposals received late will be returned unopened.

Proposals must be submitted in typed or printed form. Each original proposal and each of the copies must be signed in ink by an authorized representative of the Vendor. Amendments shall be signed by the same person who signed the proposal unless another person has been given signature authority, which must be verified.

The following describes the format in which bid proposals must be presented. Utilization of a standard format will facilitate the evaluation process. Each proposal must contain, at a minimum, the following items and must be presented in the following sequence: (Please provide the level of detail requested.)

A. Agreement to Contract Terms and Conditions (Section II)

B. Qualifications Documentation (Section III) with signed Certifications

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

(Section VIII)

- C. State and Vendor Responsibilities (Section V)
- D. Technical Proposal - Questionnaire and Responses (Section VI)

NOTE: Price information must be submitted in a separate envelope within the sealed container. Price information is not to be shown in any other part of the proposal.

1.3 Proposal Reservations

The Department reserves the right to reject any or all proposals, to request and evaluate "best and final" proposals, to award in whole or in part, and to waive minor defects. An individual proposal may be rejected if it fails to meet any requirement. The Department may seek clarification from a Vendor at any time, and failure to respond is cause for rejection. Any alternate proposal that meets the Department's needs may also be considered. Contract negotiations may be necessary after the award to formalize understandings.

Submission of a proposal confers no rights on the Vendor to an award or to a subsequent contract. This RFP process is for the Department's benefit only and is intended to provide the Department with competitive information to assist in selection of goods or services. All decisions on compliance, evaluation, terms, and conditions shall be made solely at the Department's discretion and made to favor the Department.

The Department reserves the right to modify requirements during the course of this contract by changing the scope of work, deliverables, and time frames, as well as addition or deletion of tasks to be performed or equipment to be provided and/or any other modification deemed necessary. Any changes in pricing proposed by the Vendor resulting from the proposed changes will be subject to acceptance by the Department. In the event prices are not acceptable to the Department, the contract may be subject to reprocurement based upon the new specifications.

1.4 Inquiries

Any inquiries shall be directed to the project contact. Do not discuss the proposal with any other State employee unless authorized by the project contact. All responses by the Department must be in writing to be binding.

1.5 Non-Conforming Technical Proposals

To be considered, the Vendor must submit a definitive proposal, as requested by this solicitation, for the work to be accomplished under the proposed contract. Proposals which merely offer to conduct a program in accordance with the general requirements of the RFP may be considered

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

non-conforming and may not be considered.

1.6 Cost of Proposal Preparations

All costs associated with preparation and submission of a proposal are the responsibility of the Vendor. These costs shall not be chargeable to the Department by the successful or unsuccessful Vendors.

All proposals become the property of the Department and will not be returned except in the case of a late submission.

1.7 Right to Contract

This RFP does not commit the Department to award a contract or to pay costs incurred in the submission of proposals, or costs incurred in making necessary studies for the preparation thereof, or to procure or contract for services or supplies. The Department reserves the right to reject any or all proposals, to negotiate with any Vendor(s) considered qualified, or to make award without further discussions.

1.8 Responsibility

In determining whether a Vendor is responsible, the Department will evaluate past performance, financial stability, references, compliance with applicable laws, business ethics and integrity, the perceived ability to perform completely as specified, and other relevant factors. Vendor must submit a current audited financial statement, annual or quarterly report, Dunn & Bradstreet rating or other acceptable proof of financial responsibility, and any other information to prove responsibility with the proposal to the address shown below. Additional information may be requested. Financial responsibility will be kept confidential unless otherwise required by law.

Illinois Department of Agriculture
Chief, Bureau of Land and Water Resources
State Fairgrounds
P.O. Box 19281
Springfield, Illinois 62794-9281

1.9 Evaluation

The Department will evaluate each response to the proposal using predetermined evaluation criteria. The general evaluation criteria, point ranking, formula, etc. will be disclosed to Vendors upon request, unless it is determined that disclosure could result in bias.

1.10 Best and Final

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

The Department's evaluation process includes the use of "best and final" proposals when deemed appropriate. The Department reserves the right, at any time prior to award of a contract and for any reasons, to request and consider "best and final" proposals from one or more of the Vendors who submitted a proposal. The number of Vendors allowed to submit "best and final" proposals and the scope of the "best and final" proposals shall be determined solely by the Department. No Vendor has a right to submit a "best and final." Any Vendor who is asked and fails to submit a "best and final" proposal need not be given further consideration. The purpose of the "best and final" proposal is to allow the Department to better define its needs; adjust specifications or other aspects of the procurement to reflect changed needs or perceptions or to address problems; or for any other purpose deemed appropriate by the Department.

1.11 Award

The Department will select the proposal(s) which meets the Department requirements and provides the best value to the Department, price and other factors being considered, and which is submitted by a responsible Vendor(s). The Department reserves the right to award to multiple Vendors. All awards must be approved by the Department.

1.12 Contract Negotiations

The Vendor(s) chosen for an award may be required to enter into contract negotiations with the Department. The Vendor(s) should be prepared to incorporate the Department request and the Vendor's proposal and any other written representations submitted with the proposal. If agreement cannot be reached to the Department's satisfaction, negotiations may begin with another Vendor(s). All contracts must be approved by the Department.

1.13 Commencement of Work

The successful Vendor(s) must not commence any billable work prior to the Department's execution of the contract. Work done before final execution is at the Vendor's risk.

1.14 Vendor Contact

Each Vendor shall designate one person who shall serve as contact for all matters pertaining to the proposal. In absence of such designation, the person who signs the proposal shall be deemed the Vendor contact.

1.15 Assignment/Subcontracting/Joint Ventures

Each entity the Department contracts with shall be contractually responsible for the total performance of its contract. Assignments for financing and subcontracting are allowable, but information on assignees

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

and subcontractors must be provided. For any joint venture to be acceptable, one Vendor must take full contractual responsibility for performance. No assignment, subcontract, or joint-venture shall operate to increase any obligation. If a subcontractor is used to provide consulting services, the subvendor's name and amounts paid to the subcontractor must be disclosed.

1.16 Governing Law

This RFP and any subsequent contract shall be governed by the laws and rules of the State of Illinois which are incorporated into this RFP by reference.

Section II

Contract Terms and Conditions

The following terms and conditions are applicable to State Contracts. Negotiations may be necessary to further define these and other terms. Submission of a signed response to this solicitation indicates agreement to the terms and conditions contained herein, unless Vendor indicates an exception in writing.

2.1 Payment Responsibility

The Department will make payments to the Vendor(s) in accordance with specified terms and conditions of the contract.

2.2 Fiscal Funding

Obligations of the Department shall cease immediately and without penalty or further payment being required if in any fiscal year the Illinois General Assembly or federal funding source fails to appropriate or otherwise make available appropriate funds for this contract.

2.3 Conflict of Interest

- A. Vendor(s) must identify each individual having a beneficial interest in the business which exceeds 7 1/2%.
- B. The conflict of interest provisions of the Illinois Purchasing Act generally prohibit contracting with a State employee or an employee's spouse or minor child; or with Vendor if any State employee is entitled to receive either directly or indirectly more than 7 1/2%, or together with spouse and/or minor children more than 15%, of the total distributable income of the business. If any individual has such a prohibited interest, that fact must be disclosed as a part of the proposal and the Vendor must state why the prohibition should not apply. The Department will determine whether an exemption to the

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

general prohibition will be allowed.

2.4 Nondiscrimination

The Vendor, his employees, and subcontractors agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The Department of Human Rights' equal opportunity clause is specifically incorporated herein.

In compliance with the State and federal constitutions, the Illinois Human Rights Act, the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Department of Agriculture does not unlawfully discriminate in employment, contracts, or any other activity.

The Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and the regulations thereunder (28 CFR 35.130) (ADA) prohibit discrimination against persons with disabilities by the Department, whether directly or through contractual arrangements, in the provisions of any aid, benefit or service. As a condition of receiving this contract, the undersigned Vendor certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the Americans with Disabilities Act (ADA).

2.5 Liability and Insurance

The Department does not assume any liability for acts or omissions of the Vendor, and such liability rests solely with the Vendor. The Vendor shall carry public liability, casualty, and auto insurance in sufficient amount to protect the Department from liability for acts of the Vendor. In addition, the Vendor shall carry worker's compensation insurance, if applicable, in the amount required by law.

2.6 Hold Harmless and Indemnification Agreement

The Vendor shall save and hold harmless and indemnify the Department against any and all liability, claims, and costs of whatever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the use, service, operation, or performance of work under the terms of this contract resulting from the negligent acts or omissions of vendor, of any employee, agent, or representative of Vendor or subcontractor. The Vendor is not responsible for consequential damages.

2.7 Limited Distribution or Use of Certain Data and Information

Vendor agrees that Vendor personnel will not divulge or release data or

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

information developed or obtained in connection with the performance of the contract, unless made public by the Department, except to authorize Department personnel or upon written approval of the user agency's project manager.

2.8 Disposition of Records

Within 30 days of receiving notice from the Department, the Vendor will provide to the Department all records related to processing and validating claims and making its recommendations to the Department. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Department for the recovery of any funds paid by the Department under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

2.9 Sexual Harassment

Effective July 1, 1993, the Vendor or Vendors shall have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. A copy of the policies shall be provided to the Department upon request.

2.10 Breach

Any breach of this contract by the Vendor will allow the Department to cancel without penalty and have any other available relief.

2.11 Governing Law

This contract shall be governed by the laws and rules of the State of Illinois which are incorporated into this RFP by reference.

**Section III
Minimum Qualifications**

In order for a Vendor to qualify to submit information and a proposal, it should be able to meet all of the following, or the equivalent of such requirements. It is at the discretion of the Department to determine the extent to which the following qualifications are required for award of the contract or that failure to meet these qualifications may disqualify any

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

Vendor. The Department intends to evaluate each proposal in its entirety.

In order for a Vendor to qualify to submit a proposal for Claims Administration Services, the following minimum qualifications must be met:

- Licensure/Certification. The Vendor must be licensed or registered with the Illinois Department of Insurance as a third party administrator as required by applicable Illinois law.
- Experience. The Vendor must have a minimum of two years of satisfactory experience in claims administration.
- Financial Condition. The Vendor must demonstrate sound financial condition and good business practices. Accounting methods must maintain a clear distinction between claims administration performed under contract for the Department and other business.
- Reports. The Vendor must agree to furnish the Department with timely reports in mutually agreed upon formats.
- Customer Service/Communications. The Vendor must provide a telephone number for claims inquiries which will be available to all employees during regular business hours.
- Medical Review. The Vendor must have medical professionals with appropriate credentials to review questionable claims. Medical experts must be present for final review/fact-finding meetings at the request of the Department.
- Pricing Screens. The Vendor must have available and provide on request all pricing screens and maximum allowable reimbursement levels per procedure code, provider, and service.
- Background Check. As a condition of award and as a continuing condition of any resulting contract, the Department reserves the right to conduct background checks of Vendor, its officers, and of those employees or agents who would perform the required services to determine suitability for performing this contract. Vendor shall complete or have completed an authorization for release of personal information that indemnifies both the Department and the provider of the information.

Section IV Background

The Department is requesting proposals for claims administration services to assist the Department in carrying out responsibilities pursuant to 70 ILCS 405/6(11) regarding the payment for outstanding health care costs of Soil and Water Conservation District employees. Soil and Water Conservation District

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

employees, their dependents, and spouses had health care coverage provided by Mid-Continent Medical Benefit Trust (Mid-Continent). In late 1995, Mid-Continent developed financial difficulties that ultimately resulted in the non-payment of claims for provider services estimated to be in excess of \$172,000. The Department has been granted legal authority to pay these outstanding health care costs and is seeking a qualified Vendor(s) to determine the amount of each claim to be paid based on standard claims adjudication practices.

CONTRACT:

This contract will be effective through _____. The contract between the Department and the Vendor will detail the services included in the administrative services fees proposed. Any additional services provided will be separately identified and negotiated.

Section V

Department and Vendor Responsibilities

The following are Department and Vendor responsibilities as indicated, applicable to any contract that may be offered as a result of this proposal. Indicate understanding and acceptance of each of the following:

DEPARTMENT RESPONSIBILITIES:

The Department will perform the following functions:

1. Provide a copy of the Mid-Continent Medical Benefit Trust document, and names, addresses, and phone numbers of the business entities relevant to the agreement.
2. Verify that claimants were eligible for insurance coverage through the Mid-Continent Medical Benefit Trust document provided by Mid-Continent during the period January 1, 1996 through December 31, 1996.
3. Provide list of verified eligible claimants.
4. Provide all initial claims information submitted by employees and providers to Vendor.
5. Make final decision on validity of claims based upon supporting documentation furnished by the Vendor.
6. Receive Explanation of Benefits (EOB) from Vendor and include the EOB with payments made on valid claims.

VENDOR RESPONSIBILITIES:

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

The Vendor will perform the following functions:

- A. Receive initial claims information directly from the Department and obtain additional information necessary to adjudicate claims and make recommendations from employees or providers;
- B. Make recommendations to the Department including supporting documentation on the validity of claims and the amount of payment to which employee is entitled under the terms with Mid-Continent;
- C. Coordinate benefit coverages for covered individuals;
- D. Upon final determination by the Department that a claim is valid, issue explanation of benefits to the Department (including copies for custodial parents) on the disposition of each claim submitted;
- E. Maintain timeliness, comprehensive auditing and internal quality control procedures;
- F. Respond to written and telephone inquiries;
- G. Provide actuarial, medical and legal advice related to benefits determinations;
- H. Make periodic reports to Department as required;
- I. Meet with representatives of the Department at Department's request;
- J. Have a fraud prevention and control plan in place;
- K. Agree to cooperate in any transfer of functions from one Vendor to another Vendor;
- L. Within 30 days of receiving notice from the Department, provide all records to the Department that contain information used by the Vendor to process and adjudicate claims and make recommendations.

Section VI Technical Proposal

Please address each of the issues in full detail in the order below, repeating the question, followed by the response.

A. Organizational History and Structure

1. Provide a copy of the latest financial statement submitted to the State of Illinois Department of Insurance and/or the latest annual report.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

2. Name all financial interests in the organization and explain the relationship(s).
3. List the proposed service team for this account.
4. When did the organization begin providing the services which are proposed? List 5 clients for which the organization provided similar services. Include contact name and phone number. What is the total volume of claims payments and the amount of transaction fees?
5. From what location(s) would the Department's account be managed and serviced?
6. Has the organization been sued in the last five years? Describe any lawsuits and their resolution.

B. Claims Processing

The primary responsibility of the Vendor is to process claims accurately and in a timely manner after the Department has furnished eligibility information. The Vendor will be expected to receive all claims directly from the Department, obtain supplemental information as needed to process claims, recommend to the Department the amount to be paid, and issue an EOB to the Department. The Department will mail the EOB along with the check to the applicable Soil and Water Conservation District.

1. List and describe all services included in the proposed claims processing fees.
2. Describe all claims processing procedures from receipt of claim form including:
 - a. Preparation of claims for processing
 - b. Coordination of benefits
 - c. Claimant/provider communications
 - d. Claim edits, including reasonable and customary charge edits
 - e. Explanation of benefits with samples
 - f. Responding to employee inquiries
3. Specify how reasonable and customary determinations are developed, by whom, for which services, how often screens are updated, and the process for approval of charges above the levels set.
4. Describe coordination of benefits procedures.
5. Provide samples of explanations of benefits, inquiry letters, and all other communication pieces that would be used with claims processing.

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

6. What are the criteria and what percentage of claims are reviewed by a medical professional?

7. What internal controls are in place to ensure quality and accuracy?

C. Systems Capabilities

1. Describe the edits to be used to assure accuracy and proper payment of claims.

D. Financial Arrangements

1. Describe procedures established to detect and control fraud.

2. Give a step-by-step description of the recovery process and the reporting for each of the following instances:

- a. fraudulent claim submitted by a provider or an employee
- b. subrogation case
- c. retroactive change in membership
- d. Vendor employee fraud

E. Customer Service

Describe the customer service function that will be included in this Contract.

F. Reporting

Provide a final report listing all claims processed and/or any other reports deemed necessary by the Department within 30 days of expiration of the Contract between the Department and the Vendor.

Section VII

Proposal Submittal Requirements

The purpose of these specifications is to provide relevant information to Vendors interested in submitting proposals to make recommendations on the adjudication of claims pursuant to the authority granted under 70 ILCS 405/6(11) concerning the payment for outstanding health care costs of Soil and Water Conservation District employees.

Objectives in Soliciting Proposals:

The Department has two primary objectives in soliciting proposals for claims processing:

- to obtain professional advice and claims adjudication recommendations;

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

- to obtain these services at a competitive cost.

General Submission Guidelines:

The date, time and address for submitting proposals are shown on the instructions page of the Request for Proposal. Please follow these directions carefully. Failure to comply is cause for rejection of the proposal. Proposals, including amendments, may be mailed or hand delivered; but in either case, must be actually received as specified. Proposals received late will be returned unopened.

Bidders will be required to present the data required by this RFP in an organized format which includes the minimum Qualifications (and signed Certifications), the Technical Proposal (and References) and the Fee Quotation. Utilization of a standard format will facilitate the evaluation. Bidders must present complete and self-explanatory information as required by this RFP. Information provided by Vendors will first be reviewed for minimum qualifications. Vendors meeting the minimum requirements will be further evaluated using the content of the Technical Proposal, based on its completeness and scope. The fee quotation will be reviewed after potential Vendors have been evaluated for overall quality and service level proposed.

Proposal Components:

To be considered for selection, a signed original and three (3) copies of sealed proposals must be submitted in a format organized by three major sections:

- Minimum Qualifications documentation (and signed Certifications)
- Responses to questions in the Technical Proposal and References
- Fee Quotation

Minimum Qualifications Documentation:

This section of the proposal should provide all pertinent licensure, registration, and experience information. The official corporate position on each of the qualifications listed should be stated. Any deviation from the qualifications should be clearly identified and alternatives suggested for the Department's consideration.

Certifications:

A copy of the Certifications section should be completed and submitted with the proposal. An original signature(s) must appear on the last page of the completed Certifications section.

Technical Proposal:

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

The Technical Proposal is to be organized in a sequence to follow the order of the major topics of Section VI of this RFP. Please repeat the question, followed by the appropriate response. The Technical Proposal should contain descriptions of how the prospective Vendor intends to service the account.

References should be provided as the final part of the Technical Proposal.

Fee Quotation:

Three copies of the fee quotation must be submitted in a separate sealed envelope. Specify any additional fees applicable. Please identify the service and the associated charges.

Supplemental Information:

The response to the RFP must be received by the Department by 5:00 p.m. C.S.T., _____ . Send the response to:

Illinois Department of Agriculture
Chief, Bureau of Land and Water Resources
State Fairgrounds
P.O. Box 19281
Springfield, Illinois 62794-9281

Section VIII
Certifications

I. The Vendor certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 or 10.3 of the Illinois Purchasing Act (30 ILCS 505/10.1 and 10.3).

II. The Vendor certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33-E3 or 33-E4 of the Criminal Code of 1961 (720 ILCS 5/33E-3, 5/33E-4).

III. The Vendor certifies that it is not in default on an educational loan as provided in Public Act 85-827 (5 ILCS 385) (a partnership shall be considered barred if any partner is in default on an education loan).

IV. The Vendor certifies that it does not pay dues or fees on behalf of its employees or agents, nor subsidizes or otherwise reimburses them for payment of their dues or fees, to any club which unlawfully discriminates (775 ILCS 25).

V. Under penalties of perjury, I certify that the name, taxpayer identification number, and legal status listed below are correct.

Name: _____

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

Taxpayer Identification Number:

Social Security Number _____

or

Employer Identification Number _____

(If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sole proprietorship, enter the owner's name followed by the name of the business and the owner's SSN. For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.)

Legal Status (check one):

_____ Individual	_____ Governmental entity
_____ Ownership of Sole	_____ Nonresident alien
_____ Proprietorship	_____ Individual
_____ Partnership	_____ Estate or legal trust
_____ Tax-exempt hospital or	_____ Foreign corporation,
_____ extended care facility	_____ partnership, estate or
_____ Corporation providing or	_____ trust
_____ billing medical and/or	_____ Other
_____ health care services	
_____ Corporation NOT	
_____ providing or billing	
_____ medical and/or health	
_____ care services	

VI.

This certification is required by the Drug Free Workplace Act (30 ILCS 580) for contracts and grants effective January 1, 1992, and thereafter. The Drug Free Workplace Act requires that no grantee or vendor shall receive a grant or be considered for the purposes of being awarded a contract from the State for the procurement of any property or services unless that grantee or vendor will provide a drug free workplace, and that individuals must not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the contract or grant. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years.

Vendor/Grantee: For the purpose of this certification, "grantee" or "vendor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or grant of \$5,000 or more from the State.

ILLINOIS REGISTER

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

program by, any employee who is so convicted, as required by section 5 of the Drug Free Workplace Act.

(f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation are required and indicating that a trained referral team is in place.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

Individuals: If Vendor is an individual, or an individual doing business in the form of a sole proprietorship, the individual certifies that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the contract. Vendor certifies that it will not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the contract. This requirement applies to contracts of more than \$5,000.

VII. Non-discrimination: In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U.S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the Department of Agriculture does not unlawfully discriminate in employment, contracts, or any other activity.

Vendor, its employees and subcontractors, agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal employment opportunity clause of the Department of Human Rights rules is specifically incorporated within this RFP.

The Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and the regulations thereunder (28 CFR 35.130) (ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the undersigned Vendor certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

VIII. Early Retirement. Vendor certifies he/she has informed the Director of the Department of Agriculture in writing if he/she was formerly employed by the Department of Agriculture and has received an early retirement incentive under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. Vendor acknowledges and agrees that if such early retirement incentive was received, this contract is not valid unless the official executing the contract has made the appropriate filing with the Auditor General prior to execution.

ILLINOIS REGISTER

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED RULES

The vendor/grantee certifies and agrees that it will provide a drug free workplace by:

(a) Publishing a statement:

(1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or vendor's workplace.

(2) Specifying the actions that will be taken against employees for violations of such prohibition.

(3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:

(A) abide by the terms of the statement; and

(B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(b) Establishing a drug free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's or vendor's policy of maintaining a drug free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug violations.

(c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and posting the statement in a prominent place in the workplace.

(d) Notifying the contracting or granting agency within 10 days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.

(e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation

DEPARTMENT OF AGRICULTURE
NOTICE OF ADOPTED RULES

CLAIMS ADJUDICATION PROPOSAL

Submitted by:

Firm

By

Title

Signature

Date

Telephone Number

Toll-free Number

Fax Number

RETURN A SIGNED ORIGINAL AND THREE (3) COPIES OF PROPOSAL TO:

State of Illinois
Department of Agriculture
Chief, Bureau of Land and Water Resources
State Fairgrounds
P.O. Box 19281
Springfield, Illinois 62794-9281

PROPOSAL DUE: _____

DEPARTMENT OF AGRICULTURE
NOTICE OF ADOPTED RULES

IX. Retention of Records: The Vendor shall maintain, for a minimum of five years after the completion of the contract, adequate books, records, and supporting documents to verify the amount, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General; and the vendor agrees to cooperate fully with any audit conducted by the Auditor General and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

X. Sexual Harassment: Effective July 1, 1993, the Vendor shall have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. A copy of the policies shall be provided to the Department upon request.

XI. For contracts exceeding \$10,000, the Vendor certifies that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

The undersigned acknowledges and agrees that each of the certifications or amendments shall be incorporated into and made a part of the invitation for bids, request for proposals, agreement, contract, amendment, renewal or other similar document to which these certifications are attached.

VENDOR

NAME

BY

TITLE

PROPOSAL COVER SHEET

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Developmental Disabilities Services2) Code Citation: 89 Ill. Adm. Code 1443) Section Numbers: Adopted Action:

144.275

Amended

144.300

Amended

144.325

Amended

4) Statutory Authority: Implementing Section 18.3 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/18.3] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/3-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

5) Effective Date of Amendments: May 15, 19986) Does this rulemaking contain an automatic repeal date? No7) Does this amendment contain incorporations by reference? No8) Date Filed in Agency's Principal Office: May 15, 19989) Notice of Proposal Published in Illinois Register: May 16, 1997, 21 Ill. Reg. 603310) Has JCAR Issued a Statement of Objections to these Rule(s)? No11) Difference(s) between proposal and final version:

In Section 144.275(d)(2) and (d)(3), added "factor determined by the Department for the" after "the".

In Section 144.300(c)(2), added "by the Department" after "determined".

DHS will later recodify to 59 ILCS.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rule replace an Emergency Rule(s) currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rule(s): These proposed amendments concerning long-term care facilities for persons with developmental disabilities (ICF/MR) reassign the \$.10 emergency dental services add-on which has been in effect since December 1, 1995. This add-on has been necessary because

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

the State's budget plan for fiscal year 1996 called for cost containment measures in some areas of the Department's medical assistance program and coverage for some optional Medicaid funded care, including dental services, was eliminated for recipients age 31 or over. However, coverage was restored for emergency dental services for adults in January 1997. Therefore, the Department is reassigning the \$.10 emergency dental add-on for the per diem for prophylaxis treatment and periodontal services, to increase the amount from \$.30 to \$.40.

16) Information and answers to questions regarding this adopted rule shall be directed to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor, Harris Bldg.
Springfield, IL 62762
(217) 785-9772
TTY: (217) 557-1547

The full text of Adopted Rule(s) begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 144

DEVELOPMENTAL DISABILITIES SERVICES

Section	
144.1	Incorporation By Reference
144.5	Determination of Program (Active Treatment) Costs
144.25	ICF/MR Service Criteria
144.50	Inspection of Care and Rate Setting Appeal Process
144.75	Comprehensive Functional Assessments and Reassessments (Repealed)
144.100	Exceptional Care Needs of Clients with Developmental Disabilities
144.105	Individual Program Plan (IPP) (Repealed)
144.125	Specialized Care - Behavior Development Programs
144.150	Specialized Care - Health and Sensory Disabilities
144.175	Functional Needs
144.200	Service Needs - Medical Care (Repealed)
144.205	Service Needs - Medical and Therapy Services (Repealed)
144.225	Individual Rights (Repealed)
144.230	Reconciliation of Resident Funds
144.250	Discharge Planning/Maximum Growth Potential Plan (Repealed)
144.275	Reimbursement for Program (Active Treatment) Costs in Residential Facilities for Clients with Developmental Disabilities
144.300	Reimbursement for Program (Active Treatment) Costs in Small Scale Residential Facilities
144.325	Capital Rate Calculation
TABLE A	Overview of Staff Intensity Scale of Maladaptive Behaviors
TABLE B	Staff Intensity Scale
TABLE C	IPP Outcomes (Repealed)
TABLE D	Guidelines for Determining Levels of Functioning
TABLE E	Standardized Adaptive Functional Assessment

AUTHORITY: Implementing Section 18.3 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/18.3] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Code [20 ILCS 705/5].

SOURCE: Adopted at 14 Ill. Reg. 4166, effective March 9, 1990; Section 144.275 recodified from 89 Ill. Adm. Code 146.225 at 14 Ill. Reg. 7651; amended at 14 Ill. Reg. 17988, effective October 29, 1990; amended at 15 Ill. Reg. 14084, effective September 24, 1991; emergency amendment at 15 Ill. Reg. 16148, effective October 22, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3497, effective February 28, 1992; amended at 16 Ill. Reg. 5898, effective March 20, 1992; amended at 17 Ill. Reg. 8478, effective June 1, 1993; amended at 17 Ill. Reg. 11480, effective July 16, 1993; emergency amendment at 17 Ill.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

Reg. 15126, effective September 2, 1993, for a maximum of 150 days; emergency amendment suspended effective October 12, 1993; emergency amendment repealed at 17 Ill. Reg. 22582, effective December 20, 1993; emergency amendment repealed at 18 Ill. Reg. 11314, effective July 1, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16619, effective October 27, 1994; amended at 19 Ill. Reg. 2890, effective February 22, 1995; amended at 19 Ill. Reg. 7906, effective June 5, 1995; amended at 20 Ill. Reg. 6916, effective May 6, 1996; emergency amendment at 20 Ill. Reg. 7426, effective May 24, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 9072, effective June 28, 1996; amended at 20 Ill. Reg. 11326, effective August 1, 1996; amended at 20 Ill. Reg. 12465, effective August 30, 1996; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 22 Ill. Reg. 9367, effective MAY 15 1998.

Section 144.275 Reimbursement for Program (Active Treatment) Costs in Residential Facilities for Clients with Developmental Disabilities

Residential facilities, including distinct parts of facilities, for clients with developmental disabilities (ICF/MR certification with licensure for ICF/DD, ICF/DD-16, SLC, and ICF/MR-SNP/PPD license), excluding State-operated state-operated facilities for individuals with developmental disabilities, will be reimbursed for an active treatment program for each client. Facility program reimbursement levels will be derived by the Department of Mental Health and Developmental Disabilities from the following four determinants which in combination will result in a total facility program per diem amount. These four determinants will be determined according to information provided in the most recent Inspection of Care (IOC) conducted by Department of Public Health survey staff. This IOC information must be validated by the survey staff prior to utilization for payment purposes. The new reimbursement level will be effective on the first day of the quarter following a facility's IOC. Where dollar, wage, or salary amounts are used, these shall be inflated to the fiscal year for which reimbursement will be made.

a) Minimum Staffing

1) Direct Services - Facilities must be in compliance with the Health Care Financing Administration's (HCFA) (42 CFR 483.430 [1996]) minimum average daily staffing standards relative to client population according to each individual's overall level of functioning:

Overall Level of Functioning	FTE* Staff : Client Ratio
Mild	1:5
Moderate	1:2.5
Severe or Profound	1:2
*FTE = Full Time Equivalent	

A) Determination of levels of functioning of clients with mental retardation and related conditions, in accordance

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

with the definition of the American Association of Mental Retardation (Mental Retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period), will include both:

- i) an assessment of intellectual functioning as measured by a standardized, full scale, individual intelligence test such as the Stanford Binet and WAIS-R. Such an assessment must be administered by a psychologist who is registered in Illinois under the Clinical Psychologist Licensing Act (Illinois Department of Professional Regulation); and
- ii) an assessment of adaptive behaviors using a nationally standardized, Department approved assessment instrument, such as the Scales of Independent Behavior (SIB) or the Inventory For Client and Agency Planning (ICAP). Such an assessment instrument will be utilized by at least one Qualified Mental Retardation Professional (QMRP) to evaluate each client's functional skills and adaptive behaviors.

B) The final determination of each client's overall level of functioning employs both the assessment of intellectual functioning and the assessment of adaptive behaviors, and will be made according to the criteria set forth in Section 144. Table D and Section 144. Table E of this Part.

C) The amount for Direct Services for these staffing ratios shall be obtained by:

- i) determining the number of clients within each overall level of functioning; dividing each number by the client component of the staff: client ratio; summing these quotients; multiplying the sum by the aide hourly wage factor, and then by 2080 (52 weeks times 40 hours per week), to obtain a total annual Direct Service cost; and dividing this total by 365 days and then by the number of clients to obtain the amount for Direct Services per client per day. For example, if a facility serves 40 clients in the mild level of functioning, 30 clients in the moderate level of functioning, and 30 clients in the severe/profound level of functioning, the number of FTE Direct Services staff will be $(40 \text{ divided by } 5) + (30 \text{ divided by } 2.5) + (30 \text{ divided by } 2) = 35$. If the aide hourly wage is \$5.00, the total annual cost will be $35 \times \$5 \times 2080 = \$364,000$. The amount for FTE Direct Services per client per day will then be $\$364,000 \text{ divided by } 365 \text{ divided by } 100 = \9.97 .

ii) In ICF/DD-16 facilities, the foregoing calculation is

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

modified such that in step two of subsection (a)(1)(C)(i) of this Section above, the facility may receive an amount for up to an additional .5 FTE. Direct Service is determined by multiplying .5 FTE by the proportion found by the ratio of the number of Medicaid eligible clients in the severe/profound level of functioning divided by the total number of eligible clients.

2) Licensed Nurses-Facilities must be in compliance with HCFA (42 CFR 483.460 (1996)) and Illinois Department of Public Health (IDPH) (77 Ill. Adm. Code 350.1230) staffing standards relative to facility type.

- A) An ICF/MR (ICF/DD, SLC, SNF/PED but excluding ICF/DD-16) licensed for a population of 90 or fewer clients, none of whom require services under Levels II and III of Specialized Care-Health and Sensory Disabilities (Section 144.150(c) and (d)), will be reimbursed for a minimum of 4.8 FTE nurses. A facility with only such a population which has a licensed capacity greater than 90 clients will be reimbursed for additional FTE nurses according to the following Table:

Licensed Capacity,	FTE Nurse : Client Ratio
Client Type	
Greater than 90 clients with no Specialized Care - Health and Sensory Disabilities	1:18.7
under Levels II and III	

- B) An ICF/MR (ICF/DD, SLC, SNF/PED but excluding ICF/DD-16) licensed for a population of 30 or fewer clients, all of whom require services under Level(s) II and/or III of Specialized Care - Health and Sensory Disabilities will be reimbursed for a minimum of 4.8 FTE nurses. A facility with only such a population which has a licensed capacity greater than 30 clients will be reimbursed for additional FTE nurses according to the following Table:

Licensed Capacity,	FTE Nurse : Client Ratio
Client Type	
Greater than 30 clients requiring Specialized Care - Health and Sensory Disabilities under Level(s) II and III	1:6.25

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

AGENCY NOTE: The Omnibus Reconciliation Act of 1987 (P.L. 100-203) requirements prohibit the admission of individuals with a primary diagnosis of mental retardation into non-ICF/MR facilities. Therefore, SNF/PED facilities which meet ICF/MR certification requirements must be certified ICF/MR in order to comply with federal law when admitting individuals with mental retardation. Facilities which undergo certification conversion to ICF/MR will retain State licensure for skilled care (SNF/PED).

- C) An ICF/MR (ICF/DD, SLC, SNF/PED but excluding ICF/DD-16) which has a licensed capacity of 30 clients or more, some of whom require services under Level(s) II and/or III of Specialized Care - Health and Sensory Disabilities, and some of whom do not require such services, will be reimbursed for a minimum of 4.8 FTE nurses for non Specialized Care individuals plus additional FTE nurses, up to a maximum of a 1:6.25 ratio, according to the following Table:

Client Type	FTE Nurse : Client Ratio
Clients requiring Specialized Care - Health and Sensory Disabilities under Level(s) II and/or III	1:6.25

Client Type	FTE Nurse : Client Ratio
Clients with no Specialized Care needs under Levels II and III	1:18.75

For example, for a facility with a licensed capacity of 42 clients, 15 of whom require services under Level(s) II and/or III, and 27 of whom do not require such services, the number of FTE nurses will be $(15 \text{ divided by } 6.25 = 2.40) + (27 \text{ divided by } 18.75 = 1.44)$, however, reimbursement will be calculated at the minimum of 4.8 = 7.2. Utilizing the maximum client ratio allowed, the facility will be reimbursed for 6.72 FTE nurses $(42 \text{ divided by } 6.25 = 6.72)$. Licensed nurses are not required in an ICF/DD-16 if none of the clients require a physician's medical care plan of treatment.

- i) An ICF/DD-16 which has eight or fewer clients with medical care plans of treatment but who do not require services under Specialized Care - Health and Sensory Disabilities, Level(s) II and/or III, will be reimbursed for .5 FTE nurse. A facility with nine or

D)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

more such clients will be reimbursed for one FTE nurse.

- ii) An ICF/DD-16 with clients requiring medical care plans of treatment and additional medical services under Specialized Care - Health and Sensory Disabilities, Level(s) II and/or III, will be reimbursed according to the method in subsection (a)(2)(D)(i) of this Section above, plus additional reimbursement for licensed nurses using an FTE nurse: client ratio of 1:6.25 up to a maximum of the 1:6.25 ratio.

- E) The licensed nurse component is computed similarly to the method in subsection (a)(1)(C) of this Section above. To determine the amount for Licensed Nurses, the number of FTE nurses required for each facility type and/or for clients receiving services under Specialized Care - Health and Sensory Disabilities, Level(s) II and/or III, shall be obtained according to subsections (a)(2)(A), (B), (C) and (D) of this Section above. This number is multiplied by the hourly nurse wage factor and then by 2080 (52 weeks x 40 hours). The product is divided by 365 and then by the number of clients.

- 3) The total reimbursement amount for Minimum Staffing is the sum of the amount for Direct Staff plus the amount for Licensed Nurses.

b) Active Treatment

- 1) Qualified Mental Retardation Professional (QMRP) - a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities, and is one of the following:

- A) A doctor of medicine or osteopathy.
B) A registered nurse.
C) An individual who holds at least a bachelor's degree in one of the following professional categories: Occupational Therapist; Physical Therapist; Psychologist. Master's Degree; Social Worker; Recreation Specialist; Registered Dietitian; and Human Services, including but not limited to Sociology, Special Education, Rehabilitation Counseling, and Psychology. (42 CFR 483.430 [1996])

- D) The amount for QMRPs assumes that a full-time QMRP is required for every 15 clients. The number of QMRPs shall be obtained by dividing the number of clients in the facility by 15. The obtained number of QMRPs is multiplied by the hourly wage factor and then by 2080. The product is divided by 365 and then by the number of clients to arrive at an amount per client per day.

2) Interdisciplinary Team (IDT)

- A) The amount for services rendered by the IDT assumes that each client requires one day of IDT services per year. This amount is computed to be \$1.82 per client per day.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

B) Interdisciplinary Team - A team which represents the professions, disciplines, or service areas that are relevant to identifying the client's needs and designing programs that meet the client's needs. Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is required (see the Department of Public Aid's rule at 89 Ill. Adm. Code 140.647). Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless the participation is unobtainable or inappropriate. (42 CFR 483.440 (1996))

3) Additional Direct Service Staff (ADSS)

A) The amount for ADSS assumes an FTE staff:client ratio of 1:7.5. The total number of clients is divided by 7.5 and a per diem amount is obtained according to the method described in subsection (a)(1)(B) of this Section. In SLC facilities, the foregoing calculation is modified so that the overall level of functioning is distributed proportionately across each living unit (16-18 clients) in step one of the calculation. If dividing the number of clients results in a fraction, it is rounded up to the next whole number in proportion to the number of clients in the severe/profound level of functioning. The total FTE is obtained by summing the calculation results from each living unit.

B) Additional Direct Services Staff - Staff which is in addition to HCFA's minimum average daily staffing standards (subsection (a)(1) of this Section), and for which the Department will provide reimbursement to ensure the delivery of active treatment. Examples of ADSS include, but are not limited to, staff who provide activity services, dietetic aides, and music therapists.

4) The total reimbursement amount for Active Treatment is the sum of the amounts for QMRP, IDT and ADSS.

c) Specialized Care

An additional amount shall be paid for clients meeting the requirements for services under Specialized Care. Detailed descriptions of services under Specialized Care are found in Section 144.125 Specialized Care - Behavior Development Programs, and Section 144.150, Specialized Care - Health and Sensory Disabilities. The service level for each client meeting the criteria of more than one Level under Specialized Care shall be determined according to his/her disability or functional deficit which represents the most intense need for services under Specialized Care, and results in the greatest reimbursement.

1) Specialized Care - Behavior Development Programs
Behavior development programs are related to maladaptive behaviors which occur with high frequency and/or great severity,

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

and are instituted for the reduction of maladaptive behaviors and/or the increase of adaptive behaviors. The behavior development program shall demonstrate the need for and use of a more intensive staffing pattern (direct care staff) than the regular pattern which is reimbursed for under subsection (a)(1) of this Section. The service level for a client who meets the requirements for services under Specialized Care - Behavior Development Programs will be identified and validated during the most recent IOC.

A) Level I - .5 hours FTE Direct Service per day.

More intense program services are provided for behaviors which occur with high frequency but moderate severity, such as verbal abuse one or more times per four hours which is hostile in tone and content.

B) Level II - 1.0 hours FTE Direct Service per day.

More intense program services are provided for behaviors which occur with high frequency and are aggressive or destructive, such as purposeful attacks of others which may result in minimal injuries, one or more times per day.

C) Level III - 2.0 hours FTE Direct Service per day.

More intense program services are provided for behaviors which occur with very high frequency such as hyperactivity one or more times per minute, or occur with high frequency and are seriously aggressive, assaultive or destructive and which may result in serious injury.

2) Specialized Care - Health and Sensory Disabilities

Specialized services for health and sensory disabilities refer to care which some clients must receive in order to attain physical health and development.

A) Definitions

i) Ambulatory-The client is capable of walking without assistance or the aid of adaptive equipment or devices.

ii) Mobile Nonambulatory-The client is capable of locomotion with mobility assistance such as adaptive equipment or devices.

iii) Nonmobile-The client is not capable of locomotion even with mobility assistance.

B) Level I - .5 hours FTE Direct Service per day. The client is ambulatory, mobile nonambulatory, or has the potential to become mobile nonambulatory, and requires services to compensate for a sensory deficit (auditory or visual), or services enabling him or her to be mobile (physical disabilities).

i) Sensory deficits-visual. The client's vision is 20/200 or less in the better eye with the greatest possible correction (Section 2 of the Blind Persons Operating Vending Machines Act [20 ILCS 2420/2]).

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

- ii) Sensory deficits-auditory. The client has a hearing impairment of at least 55 decibels in the better ear, unaided.
- iii) Physical disabilities means physical impairments which result in functional deficits requiring the client to receive training in the use of a device or devices, to achieve some level of independent mobility.
- C) Level II - 1.0 hours FTE Direct Service per day. The client is nonmobile or mobile nonambulatory, requires mobility assistance, and requires services to meet high personal care needs. The client may also have significant daily medical needs and/or dual sensory deficits (visual and auditory).
- i) Mobility assistance means assistance in transferring from a bed to an alternative position device, and assistance with movement/mobility around the facility.
- ii) High personal care means one or more of the following: assistance with bathing, clothing, grooming and hygiene, eating and continence; position changes at two hour intervals, or as specified in the individual program plan; range of motion twice a day, or as specified in the individual program plan.
- iii) Daily medical need means daily insulin injections, drug (insulin) monitoring, and/or ostomy care for a Jejunostomy, ileostomy or colostomy.
- iv) Dual sensory deficits means both an auditory disability and a visual disability.

AGENCY NOTE: A client who meets the criteria for Level II services is eligible for the FTE nurse:client ratio according to subsections (a)(2)(B), (C) and (D) of this Section.

- D) Level III - 2.0 hours FTE Direct Service per day. The client is typically nonmobile or mobile nonambulatory, but may be ambulatory, and requires services to meet high medical needs. High medical needs mean one or more of the following:

- i) daily intermittent catheterization;
- ii) care for wounds including stage III and IV decubitus ulcers, deep wounds, infected wounds, extensive burns, or extensive lesions requiring treatment in the form of medications, dressings, whirlpool, ultraviolet light and/or irrigations;
- iii) respiratory care including tracheotomy care, positive pressure breathing treatments, aerosol therapy, postural drainage and percussion, vibration and/or suctioning;
- iv) feeding via nasogastric tube, or prolonged oral feeding; and
- v) intensive physical habilitation due to a functional

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

deficit as determined by physical or psychological causes.

AGENCY NOTE: A client who meets the criteria for Level III services is eligible for the FTE nurse:client ratio according to subsections (a)(2)(B), (C) and (D) of this Section.

- 3) The total reimbursement amount for Specialized Care shall be the sum of the amounts determined under subsections (c)(1) and (2) of this Section, pro-rated over the number of eligible clients identified in the most recent facility reimbursement survey. For example, if the hourly wage is \$5.00, assume a facility with ten residents, two of whom meet the criteria for Specialized Care - Health and Sensory Disabilities Level II, subsection (c)(2)(C) of this Section, with no daily medical needs or sensory deficits, and eight of whom do not meet Specialized Care criteria. The facility will receive an amount of \$.81 per client per day (two hours X 1.14 (FTE adjustment factor) divided by eight hours/day = .285 staff; then .285 X (2080 hours/year divided by 365 days/year); then divide by ten clients and multiply by \$5.00 to obtain \$0.81).

d) Related Costs

- 1) An amount per client per day will be paid for other program costs, including program - related supplies, consultants and other items necessary for the delivery of active treatment to clients in accordance with their individual program plans.
- 2) For each facility type, this amount will be determined as follows. Add the amounts determined for subsections (a), (b) and (c) of this Section, but excluding the amount for the IDT (subsection (b)(2) of this Section), and then multiply this sum by the factor determined by the Department for the facility's geographic area Health--Service--Area--(HSA)--grouping (see the Department of Public Aid's rule at 89 Ill. Adm. Code 140. Table B). The product plus the amount for the IDT (subsection (b)(2) of this Section), is then multiplied by a constant for the facility type, as follows:

Facility Type	Constant
ICF/DD	.10
SNF/PED or ICF/DD	.15
(An ICF/DD with some clients requiring services under Level(s) II and/or III of Specialized Care - Health and Sensory Disabilities).	
ICF/DD-16 & SLC	.20

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

144.275(a)(1)(C)(i).

C) The reimbursement for a client residing in a small scale ICF/MR who has been found to be ineligible for ICF/MR services, as a result of the facility's Interdisciplinary Team (IDT) process or an IOC determination, will be at the mild level of overall functioning for not more than one year from the quarter following the determination of ineligibility. If the client has not been discharged in accordance with Section 144.250 by the end of the one year period, reimbursement will be made at the Department's sheltered care rate. The sheltered care rate will be payment in full for all program, capital and support costs for such clients.

D) Reimbursement for a client admitted to a small scale ICF/MR who is determined to be ineligible, or who is without a determination of eligibility by the preadmission screening process, will be set at the sheltered care rate. The sheltered care rate will be payment in full for all program, capital and support costs. Payment for services for each client who has not been found eligible for the ICF/MR program upon admission will terminate 30 days following the date of admission. Reimbursement for residential services for such a client which is paid to the facility beyond the 30 day period following admission will be recouped by the Department from the next facility payment or other contractual time period.

E) The facility rate paid will be the weighted average of the total per diem (including capital and support) calculated for eligible clients with mild, moderate and severe/profound levels of overall functioning and the Department's sheltered care rate for clients admitted without previously determined ICF/MR eligibility, or who are ineligible for ICF/MR services as determined by the IDT or IOC process, and remain in the facility for more than one year following the date of the determination of ineligibility.

2) Licensed Nurses

A) If a client requires nursing services due to a physician's plan of care, reimbursement is calculated according to Section 144.275(a)(2)(D). The FTE nurse to client ratios which are specified for ICF/MR facilities with 16 or fewer beds, are also used for a set of small scale ICF/MR facilities as identified by the provider agreements (see the Department of Public Aid's rule at 89 Ill. Adm. Code 140.561(a)).

B) The licensed nurse component is computed according to the method in Section 144.275(a)(2)(E).

3) The total reimbursement amount for Minimum Staffing is the sum of the amount for Direct Services staff plus the amount for Licensed

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

Nurses.

b) Active Treatment

1) Qualified Mental Retardation Professional (QMRP) (Section 144.275(b)(1)(A), (B) and (C)).

A) The reimbursement amount paid is based on sixteen clients in an identified set of 4-person and 6-person ICFs/MR.

B) The amount for QMRPs is based on a required full-time QMRP for every 15 clients. The number of QMRPs shall be obtained by dividing the number of clients in the facility by 15.

The amount paid for QMRPs is computed according to the method in Section 144.275(b)(1)(D).

2) Interdisciplinary Team (IDT) (Section 144.275(b)(2)(B)) - The amount for services rendered by the IDT is based on one day of IDT services per year for each client. This amount is computed to be \$1.82 per client per day.

3) The total reimbursement amount for Active Treatment is the sum of the amounts for QMRP and IDT.

c) Related Costs

1) An amount per client per day will be paid for other program costs, including program related supplies, consultants and other items necessary for the delivery of active treatment to clients in accordance with their individual program plans.

2) For each facility, this amount will be determined as follows. Add the amount determined for subsections (a) and (b) of this Section, but exclude the amount for the IDT. Multiply this sum by the factor determined by the Department for the facility's geographic area HSA--grouping. The product plus the amount for the IDT is then multiplied by the constant of .20.

3) An amount will be paid for dental services that are in compliance with the Health Care Financing Administration's regulations (42 CFR 483.460(e), (f) and (g) (1996) (1994)) for each client age 21 or more. This amount will be determined by adding the flat per diem of \$.40 \$-38 to the amount calculated according to subsection (c)(2) of this Section above. This per diem will cover the costs of prophylaxis treatment up to once every six months, and periodontal services as needed for each eligible client. An amount will also be paid for emergency dental services pursuant to Section 144.275(d)(4).

d) Total Program Per Diem - Total program per diem for each small scale residential facility will be the sum of the amounts from subsections (a), (b) and (c) of this Section.

(Source: Amended at 22 Ill. Reg. 9287, effective MAY 15 1998)

Section 144.325 Capital Rate Calculation

a) Capital rates for ICF/MR facilities with four or six beds will be

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

calculated by the Department of Mental-Health--and-Developmental Disabilities according to this Section, which provides calculation methods for rates for various capital categories. Rate charts will be prepared each year based upon these provisions. The rate for an individual facility will be selected based upon the following criteria:

- 1) New construction or remodeled building. If the facility is a remodeled building the base cost will be used to assign it to a category.
- 2) Base Year
- 3) Location

b) The terms used in this Section are defined as follows:

- 1) "Arm's-length transaction" means a transaction between a buyer and a seller both free to act, each seeking his own best economic interest. A transaction between related parties as defined in the Department of Public Aid's rule at 89 Ill. Adm. Code 140.537 is not considered to be an arm's-length transaction.
- 2) "Base Year" refers to the weighted average year of investment in the actual construction of the building. The Base Year is determined using the components of the building cost, which are included in the Building Base Cost, and the corresponding years of acquisition or construction. The year of each component of the total investment is multiplied by the cost of each year's investment. The sum of these products is then divided by the total Building Base Cost to yield an average year of construction. Any fractional portion of the Base Year derived from this calculation will be truncated. The Base Year will not change due to sale or lease of the building.
- 3) "Capital Days" are used to convert all capital items to per diem amounts. A 93% occupancy standard is used in the rate calculation.
- 4) Building Base Cost refers to the cost to purchase the building to be first licensed as an ICF/DD-16 facility with four or six beds. Only costs associated with arms-length transactions between unrelated parties will be considered. The allowable cost of subsequent improvements to the building will be included in the building base cost. The building base cost will not change due to sales or leases of the facility.
- 5) "Square feet per bed" is defined as 445 square feet per bed for a four bed facility and 365 square feet per bed for a six bed facility.
- 6) "New Construction Cost Per Square Foot" is defined as the costs published by the R.S. Means Company, Inc.. Data will come from the most recent edition of the Means Square Foot Costs publication. The cost used per square foot for new construction is based upon average residential one story construction. Factors are included for wood frame, wood siding, central air, and two bathrooms.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 7) Location. The facilities will be separated into one of the following location groups:

- A) Group 1 - Cook, DuPage, Will and Lake counties.
- B) Group 2 - Counties 175,000 to 1,000,000 population.
- C) Group 3 - Counties below 175,000 population.

- 8) New building construction refers to construction of a complete building for the purpose of being licensed and operated as an ICF/DD-16 facility with four or six beds.

- 9) Remodeled buildings refer to buildings which previously existed for some other function and were remodeled to be licensed and operated as an ICF/DD-16 facility with four or six beds.

c) The rates will be calculated for facilities constructed during the current rate year according to the following steps. These steps will result in six different rate categories. There is a four bed rate and a six bed rate within each of three different location categories.

- 1) Preliminary Cost Per Bed - The new construction cost per square foot is multiplied by the square feet per bed to get a preliminary cost per bed.
- 2) Revised Cost Per Bed

- A) The preliminary cost per bed is multiplied by a 120% adjustment factor and is then further increased by factors for a two car garage and for sprinklers as follows:

- i) Garage - The R.S. Means Company, Inc. projected cost for an attached two car garage is divided by four or six beds whichever is applicable to obtain a cost per bed.

- ii) Sprinklers - A \$6,200 sprinkler cost is divided by four or six beds whichever is applicable to obtain a cost per bed.

- B) The result of this step is a revised cost per bed for new construction.

- 3) Localized Cost Per Bed

- A) The revised cost per bed is multiplied by a locality adjutor for the applicable area of the State in which the facility is located. A separate locality adjutor is calculated for the following areas:

- i) Cook, DuPage, Will and Lake counties.
- ii) Counties 175,000 to 1,000,000 population (excluding DuPage, Will and Lake Counties).
- iii) Counties below 175,000 population.

- B) The locality adjutors are calculated as the average of all locality factors for each area in the most recent R.S. Means Company, Inc. publication.

- C) The result of this step is the localized cost per bed.

- 4) Total Projected Investment Per Bed - Land is added to the localized cost per bed to arrive at the total projected investment per bed. Land is based upon \$25,000 for facilities located in the Cook, DuPage, Will and Lake counties. Counties

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

with a population of 175,000 to 1,000,000 will use a \$18,750 total land cost. Counties with a population below 175,000 will use a \$12,500 total land cost. The total land cost is divided by four or six beds to determine the land cost per bed.

- 5) The total projected investment per bed is divided by 339 client days (365 days X 93% = 339) to arrive at a per diem investment.
- 6) The per diem investment is multiplied by a 11% rate of return and further increased by \$3.01 per diem for equipment, working capital costs and vehicles to obtain the rate.

- 7) The rates for facilities with a base year which is older than the current rate year will be calculated using the same steps as newly constructed facilities in subsection (c) of this Section except for the localized cost per bed in subsection (c)(3). The localized cost per bed is discounted by a 3% obsolescence for each year between the base year and the current year.

- 8) A table will be prepared by the Department of Mental-Health and Developmental-Disabilities which will list all applicable rates for each rate year. The rate for any facility will be looked up based upon the base year, bed size and location of the facility.

- 9) Rates for Remodeled or Existing Construction

A) To recognize the potentially wide range of investment in existing facilities to be converted into small scale ICF/MR facilities with four or six beds, modifications have been made to the calculation of total projected investment for subsection (c)(4) of this Section.

B) The buildings which were remodeled will be separated into four categories using the lower of the actual land and building purchase price plus remodeling cost per bed, or the appraisal cost of land and building per bed. This assignment to categories is based upon comparison of the facility's cost (lower of actual or appraisal) to the result of the following percentages of the projected investment from subsection (c)(4) of this Section: (Equipment cost is not included in this comparison.)

- i) Category 1 - 77.5% and above
- ii) Category 2 - 62.5% to 77.4%
- iii) Category 3 - 47.5% to 62.4%
- iv) Category 4 - 47.4% and less

C) The total projected investment from subsection (c)(4) of this Section will be multiplied by the following category percentages as applicable, and rates calculated based upon the remaining provisions in subsection (c):

- i) Category 1 - 85%
- ii) Category 2 - 70%
- iii) Category 3 - 55%
- iv) Category 4 - 40%

- d) Rented facilities will have the capital rates calculated by the same procedures as are used for owned facilities.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

e) Property Taxes

- 1) For four and six bed facilities which can show they will be required to pay property taxes, the Department will have the median property tax rate for their geographic area HSA added to the capital rate.

- 2) In subsequent years the property tax portion of the capital rate will be calculated in accordance with the Department of Public Aid's rule at 89 Ill. Adm. Code 140.578(b).

f) Combined Rate

- 1) Small scale ICF/MR facilities are separately licensed facilities. However, reimbursement for capital costs is based on the sixteen person capacity of a set of four 4-person facilities, or one 4-person plus two 6-person facilities (see the Department of Public Aid's rule at 89 Ill. Adm. Code 140.561(b)). The set of small facilities used in computing the capital rate will be identified in the provider agreements.

- 2) A separate capital rate will be calculated for each licensed facility in the set of four facilities or one 4-person plus two 6-person facilities. These rates will be combined to arrive at one average capital rate for the set. The averaging of the capital rates will be weighted according to the number of licensed beds in each of the four facilities in the set.

(Source: ~~Adm. Code~~ **9305** 22 Ill. Reg. effective **0207**)

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Lottery (General)2) Code Citation: 11 Ill. Adm. Code 17703) Section Numbers: Adopted Action:

1770.10	Amendment
1770.40	Amendment
1770.50	Amendment
1770.60	Amendment
1770.80	Amendment
1770.90	Amendment
1770.100	Amendment
1770.130	Amendment
1770.140	Amendment
1770.150	Amendment
1770.160	Amendment
1770.170	Amendment
1770.190	Amendment
1770.200	Amendment

4) Statutory Authority: Implementing Sections 7.1 and 7.2, and authorized by Section 7.1, of the Illinois Lottery Law [20 ILCS 1605/7.1 and 7.2] and Executive Order 86-2, effective July 1, 1986.5) Effective Date of Amendments: May 15, 19986) Does this rulemaking contain an automatic repeal date? No7) Does this Amendment contain incorporations by reference? No8) Date filed in Agency's principal office: May 11, 19989) Notice of Proposal Published in Illinois Register: 22 Ill. Reg. 1650, 1/16/98.10) Has JCAR issued a Statement of Objections to this Rule? Yes, JCAR issued an Objection at 22 Ill. Reg. 8041, 5/8/98 and the agency submitted its response to JCAR for approval on 5/8/98. This rulemaking has been modified to meet the Objection.11) Difference(s) between proposal and final version: Referencing the line numbers set forth in the First Notice Line Numbered Version of the rulemaking, the following modifications were made to the rules between the proposal and the final version:

1. In line 46, added reference to emergency amendment effective 1/15/98 for a maximum of 150 days.
2. In lines 169, 195 and 480, struck "thirty" and added "30".

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

3. In line 305, struck the comma after "rules" and added "or".
4. In line 336, struck the comma after "rules".
5. In line 381, added "the" after "operated by".
6. In line 801, struck "prize" and added "price".
7. Deleted lines 1127 through 1142 (subsection (i) of Section 1770.190) and renumbered remaining subsections.
8. In line 1184, inserted a comma after "director".
9. In line 1195, inserted a comma after "to", struck the comma after "any", and inserted a semicolon after "officer".
10. In line 1196, struck "or".
11. In line 1199, struck the period after "Section" and inserted "; or".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes, all agreed changes have been made.13) Will this rule replace an emergency rule currently in effect? Yes, this rule will replace the emergency rule adopted 1/15/98.14) Are there any amendments pending on this Part? No15) Summary and purpose of amendments: Sections 1770.10, 1770.40, 1770.50 and 1770.90 were amended to establish uniform standards for the service of notices under the Lottery Law or General Rules.

Sections 1770.50, 1770.60 and 1770.200 were amended to reflect the passage of Public Act 90-346 prohibiting the redemption of lottery prizes by minors and gifts of lottery tickets to minors. Sale of tickets to minors was already prohibited.

Sections 1770.80 and 1770.100 were amended to detail the various forms of security accepted from prospective agents, when security is deemed by the Deputy Director for Finance to be a prerequisite to licensing. Section 1770.80 was further amended to clarify the financial liability of outgoing agents in change of ownership situations.

Section 1770.90 was amended to reflect a restructuring of job duties in the Department's Financial Accounting division.

Section 1770.130 was amended to reflect the addition of The Big Game to the Lottery's product mix. Section 1770.140 was amended to reflect changing technology which may, in the future, permit Lottery ticket sales by electronic means.

Sections 1770.150, 1770.160 and 1770.170 were amended to achieve consistency within the rules.

Section 1770.190 was amended to reflect the switch to a lump sum payout in

DEPARTMENT OF THE LOTTERY
NOTICE OF ADOPTED AMENDMENTS

the Lotto game (replacing an earlier emergency amendment); address the treatment of past multi-year prizes claimed by partnerships, in the event of the death of a partner; and specify the method of payment of any unpaid, guaranteed prize amount upon the death of a prize-for-life winner.

Any amendments not specified were to correct grammatical errors, eliminate numerical redundancies or achieve consistent terminology throughout the rules.

16) Information and questions regarding these adopted amendments should be directed to:

Lisa A. Crites, Rules Coordinator
Illinois Department of the Lottery
201 East Madison Street
Springfield, Illinois 62702
217/524-5253

The full text of the amendments begins on the next page:

DEPARTMENT OF THE LOTTERY
NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE C: LOTTERY
CHAPTER II: DEPARTMENT OF THE LOTTERY

PART 1770
LOTTERY (GENERAL)

Section	
1770.10	Definitions
1770.20	Selection of Lottery Sales Agents; License Application and Fee; On-Line Status
1770.30	Special Licenses
1770.40	License Revocation Without Prior Notice
1770.50	License Revocation, Suspension, Non-Renewal or Denial With Prior Notice
1770.60	Conditions of Licensing
1770.70	License to be Displayed
1770.80	Change of Name, Ownership, or Form of Business Organization
1770.90	Delinquent Financial Obligations
1770.100	Bonding of Agents
1770.110	License Expiration and Renewal
1770.120	Agent Financial Adjustments
1770.130	Lost, Stolen, and Damaged Winning Tickets and other Discrepancies
1770.140	Sales by Department Directly
1770.150	Sales, Inspection, Compensation, and Ticket Purchases
1770.160	Lottery Tickets
1770.170	Lottery Games
1770.180	Drawings
1770.190	Prize Payment, Claiming of Prizes and Transfers to Common School Fund
1770.200	Eligibility to Buy
1770.210	Sale of Promotional Items
1770.220	Priority of Rules

AUTHORITY: Implementing and authorized by Sections 7.1 and 7.2 of the Illinois Lottery Law [20 ILCS 1605/7.1 and 7.2] and Executive Order 86-2, effective July 1, 1986.

SOURCE: Filed by the Lottery Control Board July 11, 1974; amended at 2 Ill. Reg. 17, p. 130, effective April 1, 1978; amended at 4 Ill. Reg. 15, p. 201, effective March 30, 1980; codified as 11 Ill. Adm. Code 1670 at 5 Ill. Reg. 10713; transferred from 11 Ill. Adm. Code 1670 (Lottery Control Board) to 11 Ill. Adm. Code 1770 (Department of the Lottery) pursuant to Executive Order 86-2, effective July 1, 1986, at 11 Ill. Reg. 1582; Part repealed, new Part adopted at 13 Ill. Reg. 7908, effective May 16, 1989; amended at 17 Ill. Reg. 18816, effective October 19, 1993; amended at 18 Ill. Reg. 13439, effective August 23, 1994; amended at 19 Ill. Reg. 6810, effective May 8, 1995; amended at 20 Ill. Reg. 15039, effective November 6, 1996; emergency amendment at 22

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

Ill. Reg. 1964, effective January 15, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 3307, effective MAY 15 1998.

Section 1770.10 Definitions

Terms defined in the Act have the same meanings when used in this Part. The following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Illinois Lottery Law [20 ILCS 1605].

"Agent" or "Sales Agent" or "Distributor" means a person and his representative who has been licensed to distribute and/or sell lottery tickets under Sections 9.d, 10 and 10.1 of the Act.

"Applicant" means a person who has applied to the Director for a license to sell lottery tickets to the public.

"Board" means the Lottery Control Board as established by Section 6 of the Act.

"Chairman" means the Chairman of the Lottery Control Board.

"Claim" means to present a purported winning Illinois Lottery ticket to a licensed Lottery Agent or a Lottery regional or administrative office for payment. "Claim" shall additionally mean the process of completing an Illinois Lottery claim form or other documentation as required by this Part. The amount of a prize claim is determined by deducting the amount of the wager from the verified prize amount.

"Department" means the Illinois Department of the Lottery.

"Director" means the Director of the Department of Lottery.

"Employee of the Department" means an employee of the Department of the Lottery.

"Game" means any individual or particular type of lottery authorized by the Department.

"License" means a license, issued by the Director pursuant to Section 9 of the Act, under the authority of the Act, for an agent to sell lottery tickets to the public. Licenses shall be effective for an initial period of two years from the date issued by the Department's Licensing Unit. Each license thereafter approved for renewal by the Department will be renewed for a two-year term dated from the date of expiration of the initial or last prior renewal term, as may be appropriate.

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

"Licensed Agent" or "Lottery Sales Agent" or "Licensed Sales Agent" means a person permitted by a license issued by the Director under the authority of Sections 9.d, 10 and 10.1 of the Act to sell Illinois State Lottery tickets to the public, by an across-the-counter transaction at a specified Point of Sale at a specifically licensed location.

"Lottery" or "State Lottery" means the Lottery established and operated pursuant to the Act.

"On-line status" means the ability of an agent to sell computer-generated Lottery game tickets or shares through a terminal connected to a Lottery central system.

"Person" shall be construed to mean and include an individual, association, partnership, corporation, limited liability company or partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, referee, or any other person acting in a fiduciary or representative capacity, who is appointed by a court, or any other combination of individuals. "Person" includes any department, commission, agency or instrumentality of the State, including the Department of the Lottery, and also including any county, city, village, or township and any agency and instrumentality thereof.

"Point of Sale" means the physical location where a licensed agent is authorized to conduct the sale of lottery tickets to the public.

"Prize" means any award, financial or otherwise, awarded to a ticket holder pursuant to the rules of the lottery.

"Related terminal" means any player activated machine or any agent operated terminal in which an owner of an agent location has 50% or greater interest.

"Secretary" means the Secretary of the Lottery Control Board.

"Service" means the mailing of any notice required by the Act or this Part by certified mail, return receipt requested. Service shall be deemed complete if the notice is returned undelivered or unclaimed when mailed, postage prepaid, to the intended recipient's last known address as disclosed in the Department's records, or if 30 days have elapsed from the date of mailing to such address with no return of the item.

"Special License" means a license issued by the Director limited in geographic scope and/or duration of validity, pursuant to Section 1770.30 of this Part.

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

"State Lottery Fund" means the special fund created in the State Treasury by Section 20 of the Act, in which all revenues received by the State Lottery, as defined and limited by Section 20 of the Act, are deposited.

"ticket" means a lottery ticket or share issued by the Department for sale to the general public.

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

Section 1770.40 License Revocation Without Prior Notice

a) Pursuant to Section 10.1 of the Act, the Director must act to assure that no person whom the Act declares to be "ineligible for a license" is granted a license and that no licensed sales agent who becomes "ineligible" under the Act is allowed to remain as a licensed sales agent. The Director may revoke the license of any agent who violates the Act or any rule promulgated pursuant to the Act. The Director may revoke a license without notice or prior hearing, upon determining any of the following:

- 1) That an agent has been convicted of a felony or any crime involving fraud, misrepresentation, moral turpitude or failure to pay taxes;
- 2) That the agent, or an employee of the agent engaged in or responsible for lottery ticket sales, has been arrested for bookmaking or any other form of illegal gambling;
- 3) That the agent has been found guilty of any fraud or misrepresentation;
- 4) That the agent has commingled and has failed to segregate Lottery funds from other funds, or has failed to surrender such funds and/or unsold instant tickets upon demand by the Department or its authorized agent, or has carried an accounts receivable balance in excess of \$500 for more than 90 days;
- 5) That the agent has failed to take reasonable security precautions with regard to the handling of lottery tickets and related materials;
- 6) That the agent has ceased to offer Lottery products for sale, or has changed business ownership, as defined in Section 1770.80(d) herein with no prior notice to the Department by the seller or buyer;
- 7) That, on the basis of information made available to the Director since the agent was licensed, the Director finds that the agent's character and general fitness are such that his or her participation as an agent is inconsistent with the public interest, convenience and necessity.
- b) In the event the Director revokes a license without notice and an opportunity for a prior hearing, the Director shall, by service of

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

appropriate notice furnished pursuant to 11 Ill. Adm. Code 1700.30 and this Part, afford the person whose license has been revoked an opportunity for a hearing within 30 thirty days after the revocation order has been issued. As a result of any such hearing the Director may confirm the action revoking the license, or may order the restoration of the license. In determining whether to confirm the action revoking the license, or order the restoration of the license, the Director shall take the following factors into consideration, if applicable:

- 1) the agent's history of past offenses;
- 2) whether the agent's course of conduct constituted a threat to the safety of the agent, Department Officials, or others;
- 3) any evidence of the agent's ignorance of a material fact which led to his unlawful conduct;
- 4) the degree of cooperation exhibited by the agent with Department Officials;
- 5) the degree to which the agent profited economically as a result of his conduct;
- 6) any other evidence offered and noted by the Hearing Officer as demonstrating factors in mitigation or factors in aggravation of the relief sought in the complaint.
- c) The Director may suspend, with or without notice or prior hearing, the license of any agent who violates this Act or any rule or regulation promulgated pursuant to this Act. In the event the Director suspends a license without notice and an opportunity for prior hearing, the Director shall, by service of appropriate notice, as provided by 11 Ill. Adm. Code 1700.30 and this Part, afford the person whose license has been suspended an opportunity for a hearing within 30 thirty days after the suspension order has been issued. As a result of any such suspension, the Director may confirm suspension of the license or may rescind the suspension. In determining whether to confirm the action confirming suspension or rescinding the suspension, the Director shall take the following factors into consideration, if applicable:
 - 1) the agent's history of past offenses;
 - 2) whether the agent's course of conduct constituted a threat to the safety of the agent, Department Officials, or others;
 - 3) any evidence of the agent's ignorance of a material fact which led to his unlawful conduct;
 - 4) the degree of cooperation exhibited by the agent with Department Officials;
 - 5) the degree to which the agent profited economically as a result of his conduct;
 - 6) any other evidence offered and noted by the Hearing Officer as demonstrating factors in mitigation or factors in aggravation of the relief sought in the complaint.
- d) Upon termination of an agent's license, the Department shall arrange, and the agent shall participate in, a meeting with the Department's representative for the purpose of rendering the agent's final lottery

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

- e) Upon receipt of notice of revocation, the agent shall surrender immediately to the Director or his or her designee, his agent's license and other lottery equipment and materials supplied to the agent by the Department, its on-line games vendor or its instant ticket validation service vendor. ~~Service--notice--shall--be--by certified--mail--Service--is--deemed--completed--if--returned--undelivered--when--mailed--to--the--agent's--last--known--address--with--proper--postage prepaid--~~
- f) Nothing in this Section shall be construed to prevent the immediate termination of an agent's license upon agent's request and the Department's approval thereof, or upon the effective date of a change in ownership for which the Department has received written documentation. The right to a hearing shall not apply in such circumstances.

(Source: Amended MAY 15 1993 22 Ill. Reg. 630.70, effective

Section 1770.50 License Revocation, Suspension, Non-Renewal or Denial With Prior Notice

The Director may deny, suspend, not renew or revoke an agent's license with prior service of notice and opportunity for hearing for one or more of the following causes:

- violation of any of the provisions of the Act or this Part;
- failure to meet or maintain the eligibility requirements for licensing as provided in the Act and these rules, and the Conditions of Licensing set forth in Section 1770.60 of this Part;
- fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the Lottery;
- the misrepresentation of, or failure to disclose, a material fact to the Board or the Director on any report, record, application, form or questionnaire required to be submitted to the Board or the Director, including, but not limited to, the misrepresentation of or failure to disclose a criminal record, taxpayer status with the State of Illinois or relevant information bearing on the financial status of the applicant;
- failure to promptly produce for inspection, by a member of the Board, the Director, or their authorized representatives, including law enforcement personnel, any book, record, account, document or item required by the Act or this Part;
- refusal to permit access to members of the Board, the Director, or their authorized representatives, including law enforcement personnel, to any place where a licensed lottery activity is conducted;
- failure to file any returns or reports or to keep any records or reports as required by the Director under the Act or this Part;
- failure to account for lottery tickets received or the proceeds from

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

- the sale of lottery tickets, or to post a bond if so required by the Director;
- failure to maintain sales levels established by Department Directive;
 - failure to comply with the instructions or directives of the Director as to security procedures for the handling of lottery tickets or the conduct of any lottery game;
 - knowingly causing, aiding, abetting or conspiring with any other person to violate this Act or this Part;
 - making a misrepresentation of fact to the purchaser, or prospective purchaser, of a lottery ticket, or to the general public, with respect to the conduct of any lottery game;
 - upon a determination by the Director that the number of lottery sales agents in agent's area of operation exceeds the number which can be efficiently supported by the Department's budget or personnel, or the public convenience in obtaining lottery products is sufficiently served by other agent locations considering the total volume of sales in such area;
 - failure to pay the Department any obligation when said obligation becomes due;
 - upon a determination by the Director that the licensed agent has become insolvent or unable or unwilling to pay his debts;
 - failure to display lottery point-of-sale material in a manner which can be readily seen by the public, or make hand-out materials readily available to the public;
 - upon any change of business ownership, business organization or business location;
 - selling a ticket, giving a ticket or paying a prize to a person under the age of 18. (Section 15 of the Act) For the purposes of this Section, an action by an employee of the agent shall constitute an action by the sales agent.

(Source: Amended MAY 15 1993 22 Ill. Reg. 630.70, effective

Section 1770.60 Conditions of Licensing

Lottery sales licenses are subject to the following conditions of licensing:

- The lottery sales license issued by the Department shall be issued to a person, as defined by Section 1770.10, for a specified point of sale, as defined by Section 1770.10, on the condition that the licensed sales agent maintains eligibility under the applicable criteria under which the license was granted by the Director, as defined in Section 1770.20;
- Licenses shall, at all times during the term of licensure, comply with the Act and any rules or instructions of the Director concerning the security of lottery equipment, tickets or money;
- Each licensed agent shall make available for sale to the public, during its normal business hours, those Illinois State Lottery ticket

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

products which the agent has been licensed to sell. No agent shall offer for sale any gambling or gaming tickets or chances other than those for which the agent is specifically licensed by the Illinois Department of the Lottery or other department, board or commission of the State of Illinois;

- d) No license issued pursuant to the Act shall be transferable or assignable;
- e) Lottery sales licenses and placards stating game play odds for Lottery games shall be displayed in a conspicuous place on the business premises where the lottery tickets are licensed to be sold;
- f) Lottery licensees shall actively promote the sale of Illinois State Lottery tickets;
- g) Licensees shall maintain authorized displays, drop boxes, equipment and properly display other promotional materials used in conjunction with sales in accordance with instructions issued by the Department. Each licensee will be held responsible for all tickets accepted from the Department or its distribution agents, by licensee, its agents or employees. All unsold tickets and receipts from sales, less commissions from such sales and less such sums as have been paid by licensees to winners of prizes in the manner prescribed by directives of the Department, shall be returned to the Department or its distribution agents by the stated settlement deadlines. Tickets not returned by settlement deadlines dates shall be considered to have been purchased by the agent;
- h) Each agent shall maintain current and accurate records of all operations in conjunction with sales in conformity with rules of the Department. Such records shall be made available to representatives of the Department and the Auditor General of Illinois;
- i) No person shall sell a ticket or share at a price greater or less than that fixed by rule of the Department, provided, the Department may enter into ticket couponing and ticket discount couponing promotions in support of marketing activities. No "service charge" or "service charge, handling fee" or other cost shall be added by any person to the established price of a ticket or share. No person shall charge a fee to redeem valid winning tickets or shares;
- j) No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent;
- k) No person other than a lottery sales agent shall sell lottery tickets;
- l) Licensed agents shall sell lottery tickets on a face-to-face or authorized dispensing machine basis only on the business premises designated in the license, and shall not conduct sales to off-premises customers by telephone, mail, parcel delivery service, or through an agent-sponsored vehicle such as a club, players' association, or similar entity;
- m) No lottery ticket shall be sold No lottery ticket--shall--be--sold or given to a person under the age of 18 years, or any prize paid to a person under the age of 18 years (Section 15 of the Act) to--a--person

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

~~under-the-age-of-18-years;~~

- n) Each licensee shall hold the Department and the State of Illinois harmless with respect to any liability arising in connection with agent ticket sales activities;
- o) Each licensee shall immediately report to the Department the loss or theft of any lottery tickets consigned to the licensee, with the ticket identification numbers;
- p) Each licensee shall redeem all winning instant game tickets presented to the licensee for prizes of less than \$600. Each on-line agent shall redeem all winning tickets of any Lottery games presented to the licensee for prizes of less than \$600. No agent shall redeem a winning ticket valued at \$600 or more, but shall instead follow established prize claim procedures;
- q) No license shall be granted to any applicant whose prior license has been revoked pursuant to these rules, when the effective date of revocation has been less than two years prior to the date of the current application;
- r) No licensed agent shall sell lottery tickets or shares issued by any governmental entity, foreign or domestic, other than tickets and shares for games operated by the Illinois State Lottery;
- s) All lottery proceeds are funds of the State of Illinois, must be separately segregated from other business or personal funds, must be held in trust on behalf of the Illinois Lottery, and the agent must, under penalty of law, maintain a separate bank account exclusively for deposit and transfer of weekly lottery fund settlements by means of an Electronic Fund Transfer system. The account must be designated on the bank's records as "Lottery Trust Fund Account."

(Source: ~~Amended~~ 22 Ill. Reg. 9307, effective MAY 15 1998)

Section 1770.80 Change of Name, Ownership, or Form of Business Organization

- a) Every change in the name, ownership or form of business organization of the business designated in the license as permitted to offer to the public lottery tickets, shall be reported by the licensed agent to the Director 30 ~~thirty~~ days prior to effective date of change. Reporting may be accomplished by completing a departmental form provided for such purpose or by mailing notice of the proposed change by certified mail, return receipt requested, postmarked on or before the 30th ~~thirtieth~~ day prior to the effective date of change, and addressed to the Department at the following address:
Illinois Lottery
201 East Madison Street
Springfield, Illinois 62702
- b) "Change of name" means a change in the name of the business designated in the license, by which name the business is intended to be known to the public.

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

- c) "Change of business organization" means a change from one form of organization and ownership of the business, as permitted by the laws of the State, to another, including, but not necessarily limited to, general partnerships, limited partnerships, corporations and proprietary ownership.
- d) "Change of ownership" means the transfer of more than 50% of the equity, management control, legal ownership, shares or stock of the business designated in the license.
- e) Each notification of change of name, ownership or form of business organization of a licensee communicated to the Director shall include the following information:
- 1) the name, address and agent identification number of the licensed agent;
 - 2) the name of the business as it appears on the license;
 - 3) the proposed new name of the business designated in the license, if applicable;
 - 4) the current form of business organization;
 - 5) the proposed form of business organization, if applicable;
 - 6) the current owners, managers or shareholders of the business, as is indicated in the license;
 - 7) the proposed changes of ownership, including the names and addresses of the proposed new owners, managers or shareholders, the percentage of proposed transfer of equity, management control, legal ownership, shares or stock; and
 - 8) the anticipated date of the proposed change in name, business organization or ownership.
- f) The Director shall review the changes, considering current licensing standards, as provided in the Act and this Part.
- g) The Director, upon approval of a change in name or a change in business structure which does not also involve a change in ownership, shall issue a replacement license reflecting the new name or business structure. The replacement license shall have an expiration date no later than the expiration date provided in the previous license.
- h) Except as provided below, any change of business ownership shall necessitate termination of the existing licensing agreement, as of the effective date of the change of ownership. The new owner must submit an application and fee as provided in Section 1770.20 of this Part. If the existing agent has not provided the Department with required written notification of the change, the applicant may be required to furnish documentation evidencing the change in ownership, such as a sales contract. In the event of change of ownership of a corporate chain or franchise in which a business at a licensed location continues operation under the franchisor or chain corporate management, and upon corporate guarantee and assumption of the financial obligations of the licensee, a license may be assigned to the corporate sponsor and need not be terminated.
- i) In the event of the proven incapacity, death, receivership, bankruptcy or assignment for the benefit of creditors of any licensed agent or

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

business as designated in the license held by a licensed agent, and upon approval of the Director, the license may continue under a court-approved or court-confirmed guardian, executor or administrator, receiver or trustee for the benefit of creditors, who may continue to operate the business designated under the license, subject to the provisions of this Act and this Part, including the requirements that:

- 1) the person to whom the license is transferred must be otherwise qualified to hold a license;
- 2) the license following the transfer shall be void in the event the license transferee ceases to hold such court-appointed or court-confirmed position;
- 3) the Director may condition the transfer of any license under this Section upon the posting of a bond, or a guaranteed payment in the form of a cashier's check or money order, on such terms and under such conditions as the Director may deem necessary to protect the financial interests of the State, provided that any such bond shall reflect the reasonably anticipated risk of transfer.

- j) Every change in the location of the business designated in the license shall be reported to the Director no less than 30 ~~thirty~~ days prior to the effective date of the change. If such change results from severe damage to or destruction of the business premises specified in the license, as a result of fire, natural disaster or other cause beyond the control of the licensed sales agent, the licensed sales agent shall promptly notify the Director of such destruction or damage to the business premises, and the consequent change of location, but in no case shall such notification be later than three days after such damage to or destruction of the premises or change of location. Upon such notification, the Director shall consider the factors set forth in Section 1770.20 of this Part to determine whether the agent should be licensed to sell tickets at the new location. Upon the Director's approval, a replacement license shall be issued having an expiration date no later than that of the agent's original license.

- k) If a sales agent fails to notify the Department, in writing, of a change of ownership before such change occurs, all owners, officers or other responsible persons named in the Application for Lottery Sales Agent's License shall remain liable to the Department for all tickets issued to or generated by the agent location, and all proceeds from the sale of such tickets (less prizes paid and/or commissions retained) to the date written notice is received by the Department and a final settlement conducted, or the date the Sales Agent's license is revoked or otherwise terminated by the Department, whichever shall first occur.

(Source: MAILED 15 1998 22 Ill. Reg. 0302, effective

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

- a) It is the obligation of each Lottery sales agent to remain current. on his or her financial obligations to the Department. Lottery accounts are due and owing, in full, on each settlement day designated by the Department. Settlement of on-line terminal agent ticket accounts will be on a weekly basis, and settlement of instant game ticket accounts will be as scheduled by the Department. Accounts not settled on designated settlement days shall be deemed delinquent. Serious or repeated delinquencies may result in the suspension or revocation of a Lottery sales agent's license or the deactivation of the Lottery sales agent's on-line terminal. In the event the Department determines that a delinquency exists as a result of failure of an agent to segregate Lottery funds from other funds or as a result of commingling of Lottery funds or other assets so that the funds and assets of the Department, held in trust by an agent, cannot be identified and surrendered upon demand by the Department or its authorized collection representative, the Department shall revoke the license without notice or prior hearing, as provided in Section 1770.40(a)(4) of this Part. Lesser delinquent financial obligations will be processed pursuant to the provisions of subsections subsection (b) and (c) of this Section.
- b) In the event an agent, authorized to sell only instant products, is delinquent with respect to settlement of his or her account, and the delinquency is the first or second such delinquency within the past twelve months, inclusive of the month of the current delinquency, the collector will establish an extended collection deadline of 4:00 p.m. on the collection day, for a morning delinquency, and 10:00 a.m. the following business day for an afternoon delinquency. A delinquent agent will be charged with each such delinquency provided, however, that an agent delinquent with respect to a settlement envelope, but timely in payment, will be charged with only one-half of a delinquency. There will be no sanctions imposed with respect to the first two such delinquencies within a twelve-month period, unless both delinquencies occur within a 30-day period. Upon the third such delinquency, or the second of two delinquencies in a 30-day period, the Department or its collection agent shall notify the licensee that it will be under review by Department management for possible license revocation. During the period of review, no new instant tickets will be delivered to the agent. If the Department determines that the delinquencies, or any of them, were reasonably justified due to circumstances beyond control of the agent, the Department will reinstate the agent. Thereafter, any subsequent delinquency which, when taken with other delinquencies within the immediate past twelve calendar month period totals three delinquencies, or two delinquencies within a 30-day thirty-day period, shall require additional review by the Department. If, upon any such review, the Department determines that the delinquencies are not reasonably justified by the agent the Department may proceed with notification of termination in accordance with the procedures set forth in subsection (d) of this Section.
- c) The Department will apply sanctions with respect to delinquent on-line

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

- agent accounts according to the following schedule of sanctions:
- 1) First delinquency: In the event an agent is delinquent in settlement of his or her Lottery account, and the delinquency is the first within the past twelve months, inclusive of the month of delinquency, the agent will deliver the settlement envelope to the Department's District Office or designated courier service and/or deliver correct payment to the Department's District Office or wire transfer the funds to the Department's account by 4:00 p.m. if delinquency was before noon (12:00 p.m.); if after noon (12:00 p.m.) the deadline is 10:00 a.m. the next working day. If the current week's settlement which was due on settlement date is paid by the extended settlement deadline, the agent will be charged with one delinquency (one-half of a delinquency if the payment was timely but the settlement envelope was delinquent as described in subsection (b) above) but will receive no further sanction;
 - 2) Second delinquency: In the event an agent is delinquent in settlement of his or her Lottery account or any extended payment deadline, and the delinquency is the second one in the past twelve months, inclusive of the month of the delinquency, the collector will promptly notify the Department of the delinquency, whereupon the delinquent agent's Lottery sales terminal and any related terminals will be immediately deactivated and the agent will be charged with a second delinquency. When settlement of the current week's account which was due on settlement date is paid to the Department's District Office or wire transferred to its account, the Lottery sales terminal and related terminals will be reactivated unless the second incident is within one month of the first. If this occurs, the sales terminal and any related terminals will be reactivated only after review and approval by the Deputy Director of Finance or Finance Division Administrative Assistant Chief-Accountant;
 - 3) Subsequent delinquencies: In the event an agent is delinquent in settlement of his or her Lottery account or any extended payment deadline, and the delinquency is the third or more in the past twelve months, inclusive of the month of the delinquency, the collector will promptly notify the Department of the delinquency, whereupon the delinquent agent's Lottery sales terminal and any related terminals will be immediately deactivated and the agent will be charged with an additional delinquency. The following table sets forth the required payment and reactivation policy:

REQUIRED PAYMENT AMOUNT	TERMINAL REACTIVATION
THIRD:	
Current week's settlement	One business day after payment and
	after review and

DEPARTMENT OF THE LOTTERY
NOTICE OF ADOPTED AMENDMENTS

approval by Deputy
Director of
Finance or Finance
Division Adminis-
trative Assistant
Chief-Accountant

FOURTH:
Current week's settlement

Two business days
after payment and
after consideration
by Deputy Director
of Finance, or
Finance Division
Administrative
Assistant
Chief-Accountant

FIFTH:
Current week's settlement

Three business days
after payment and
after consideration
by Deputy Director
of Finance
Division Adminis-
trative Assistant
Chief-Accountant

- d) The Lottery may, upon written notification and with opportunity for hearing, revoke an agent's license after review of a delinquency, at any stage if the Director determines that termination is in the best interest of the Lottery. Such termination may be initiated without prior notice and opportunity for hearing when the Department's funds are not segregated and available for surrender or when accounts receivable exceed allowable limits as provided in Section 1770.40 of this Part. An evaluation of the circumstances surrounding delinquency, including a review of a delinquent agent's past delinquency record will be conducted to differentiate between incidental agent management error and lack of financial stability or responsibility. Service is deemed complete if returned undelivered when mailed to the agent at the address of the licensed premises with proper postage prepaid.
- e) It is the responsibility of the licensed sales agent to insure that all payments due the Department are properly prepared. Failure to properly prepare and tender any payment due the Department shall not be an excuse for failure to fulfill obligations due the State Lottery.
- f) The deactivation or removal of an on-line terminal, or the suspension

DEPARTMENT OF THE LOTTERY
NOTICE OF ADOPTED AMENDMENTS

or revocation of the license of a Lottery sales agent shall not relieve the Lottery sales agent of liability for any obligation due the Department.

(Source: Amended at 22 Ill. Reg. 9307, effective
MAY 15 1998)

Section 1770.100 Bonding of Agents

The Department may require a surety bond or a guaranteed payment in the form of a cashier's check or money order bond secured by the assignment of a bank account or certificate of deposit from any agent, at such agent's expense, so as to avoid any monetary loss to the State because of an agent's activities in the sale of tickets. The Department may require a financial statement revealing the financial condition of any person or organization seeking to become or continue as an agent.

(Source: Amended at 22 Ill. Reg. 9307, effective
MAY 15 1998)

Section 1770.130 Lost, Stolen, and Damaged Winning Tickets and other Discrepancies

- a) No claim for a game prize with respect to any Lottery game shall be honored, and no prize shall be paid with respect to any such claim, unless the claim is accompanied by a valid winning ticket for the game and the prize. Each winning ticket must pass such validation and security tests as the Department may require to validate the ticket.
- b) Whenever a winning ticket is stolen, lost or destroyed after such ticket has been placed in the hands of a Lottery agent or the Department, the Department may provide for payment of the prize to the winner thereof, provided that the purported winner furnishes a valid claim receipt with attached computer-generated claim ticket, with respect to a claim filed with a Lottery agent, or the claim receipt only, with respect to a claim filed with a Department administrative or marketing office. For instant game prizes where there is no computer-generated claim ticket, a written statement from the agent, confirming that the winning ticket was received by such agent, may be required prior to payment authorization. In the event a claim has been entered into the computer system but the claimant is unable to produce a claim receipt or, where appropriate, claim ticket, no action will be taken with respect to the claim until the claim period for the game has expired. If the ticket and original claim form and claimant's copy of the claim form remain lost at the conclusion of the claim period for the game in question, within 30 thirty calendar days from and after the final claim date, any claimant with respect to such a prize may request a hearing, as provided by the Hearing Rules of the Department (11 Ill. Adm. Code 1710), for purposes of proving-up the

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

claim. If multiple claims are filed with respect to the same prize, such claims shall be heard in a consolidated hearing during which each claimant shall be permitted, in turn, to present evidence in support of his or her claim. No discovery of Department records relating to ticket procurement or ticket claims shall be allowed. At the conclusion of the offering of all proofs by all claimants for a prize, the Department shall offer such evidence as may be available from Department records that will tend to establish that agent location at which the actual winning ticket was sold, together with the ticket identification numbers, and the date and time of sale. The Department's motion for dismissal prior to offering of proofs, accompanied by Department's certification that no computer claim record exists with respect to a purported claim, shall constitute an absolute defense to any claim for a prize.

- c) Whenever a player submits a claim during the valid claim period for a game alleging that a properly purchased Illinois Lottery ticket was lost or stolen after being deposited in the U.S. Mail, if one year has elapsed since the date of the on-line drawing for which the ticket was purchased or one year has elapsed since the announced end of game for the instant game in question, and no prize has been paid to or claimed by another person, the Director may declare the ticket to be a valid winning ticket and authorize payment of the associated prize to the claimant provided that the following conditions are met:

- 1) The claimant furnishes a copy of the ticket or other satisfactory evidence as to the date, time and location of the ticket purchase for on-line games; the game, location of purchase, and approximate date of purchase for instant tickets; or such other relevant information as could only be known by the original purchaser of the ticket;
- 2) The claimant establishes to the satisfaction of the Director that the claimant took reasonable steps with respect to the security of the ticket, actually deposited the ticket in the U.S. Mail properly addressed to the Illinois Lottery, and that the ticket was not lost or stolen due to the player's negligence or carelessness;
- 3) One and only one claimant meets the criteria outlined in subsections (c)(1) and (2) above; and
- 4) The prize claimed is not a Lotto game Grand Prize, Little Lotto game First Prize, The Big Game Grand Prize or Second Prize, or instant game prize in excess of \$5,000.

Evidence regarding the date, time and place of purchase will not be considered satisfactory evidence of ticket purchase if such information has been generally released to the public by the Department.

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

Section 1770.140 Sales by Department Directly

- a) The Department may engage in direct sales of tickets at any selling points it establishes within the State. The Department may also sell its products by means of telephone, electronic transmission, parcel delivery services and, to the extent permitted by federal statutes, through the U.S. Mail United-States-mails.
- b) In any case where the Department is engaged in the selling of tickets as a general promotion, nothing herein shall be construed to prohibit the Department from compensating lottery agents who may be economically adversely affected by such promotion.

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

Section 1770.150 Sales, Inspection, Compensation, and Ticket Purchases

- a) Except as provided in Section 1770.140 of this Part, tickets shall be sold only to purchasers physically present on the premises at the specific location named in the license.
- b) All ticket sales shall be final, and no agent is authorized to accept ticket returns except as otherwise provided in this Part or with the specific approval of the Director.
- c) Authorized inspectors of the Department may inspect the business premises of any agent at any time during normal business hours. Such inspections may be made without prior notice to the agent.
- d) An agent is entitled to a commission for tickets sold by the agent at such rate or rates as are established by the Director. Each licensed agent shall be entitled to such bonus or bonuses to be awarded with respect to a winning ticket sold by the agent as may be established by the Director with respect to each particular lottery game.
- e) The Director may award additional cash bonuses or other incentives from time to time to sales agents. Agents shall be notified of any such bonuses or incentives by means of an agent newsletter or such other similar agent circular as may be distributed by the Department.
- f) Each agent shall deposit to a Lottery Trust Fund Account in a bank, or otherwise return to the Department in the manner prescribed by directive, all monies received by the agent from the sale of tickets less the amount of commission and such sums of money paid out by the agent to winners of prizes (lottery proceeds) which must be separate and apart from other business or personal funds and must be segregated as a trust fund on behalf of the Lottery. The agent shall file with the Department, or its designated representatives, reports of receipts, sales, payment to winners and related transactions in such form and containing such information as the Department may require by directive. Any discrepancies in such receipts and transactions are to be resolved as provided in the reporting directives.
- g) All tickets, accepted by an agent from the Department or its

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

authorized representatives, are the property of the Lottery until sold and deemed to have been purchased by the agent, unless returned to a representative of the Lottery within the time specified by the Department and the purchase price paid to the State, less the appropriate deductions. The agent is responsible for lost, stolen or missing tickets not returned.

(Source: Amended 22 Ill. Reg. 9307, effective MAY 15 1988.)

Section 1770.160 Lottery Tickets

- a) The Director is authorized to prepare for sale to the public such lottery tickets as may be appropriate for implementation of the lottery games offered, from time to time, by the Department.
- b) Each lottery ticket shall contain the price of the ticket, the drawing date if appropriate, and such unique identification numbers or symbols and such other information as the Director may deem appropriate for security and marketing purposes.
- c) Any unsigned lottery ticket issued by the Director is a bearer instrument and shall be treated as such until a name is imprinted or placed upon the rear portion of the lottery ticket in an area designated for "Name". Once a name is placed on the rear of said ticket in the place designated therefor, the person whose name appears in that area shall be the owner of said ticket and shall be entitled to any prize attributable thereto, subject to the provisions of subsection (d) of this Section.
- d) In the event an otherwise valid ticket is submitted as a claim for payment, and the Department is put on notice prior to payment of said claim that ownership of the ticket is disputed by an adverse claimant alleging fraud, theft, loss, conversion or any other misappropriation of the ticket by the claimant of record, the Department may withhold payment of the claim for a period of ten working days from and after the working days during which the adverse claim was first communicated by oral or written means to the Department. If a civil action is initiated on behalf of the claimant or adverse claimant in a circuit court of the State of Illinois, or equivalent court of any sister state within ten working days from and after the Department has received the notice of adverse claim, the Department shall continue to withhold payment of the prize, or any part thereof to the claimant or adverse claimant until an adjudication of the ownership has been rendered by the court, all statutory appeals therefrom have been exhausted and, in the case of a judgment entered by the courts of a sister state, the final order has been registered as a foreign judgment in an Illinois court, and all statutory appeals therefrom have been exhausted, whereupon the Department shall honor the claim of the prevailing party. During the course of any such litigation conducted in the courts of the State of Illinois, the Department may

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

interplead and pay into court the prize or, in the case of an installment prize, such installment or installments as may fall due during the course of litigation. In the event the Department is not notified by written confirmation received by the Department before close of business on the tenth working day from and after receipt of the initial adverse claim by the Department, that a civil lawsuit has been filed as provided herein, the Department shall honor the claim as filed by the claimant who has presented the winning ticket, and will proceed to process the claim for payment without further reference to the adverse claim. If a violation of Illinois criminal law is indicated, the matter shall be referred by the Director to the appropriate law enforcement authorities, and nothing in this Section will be construed to require the Department to take any action or pay any claim pending final disposition of any criminal investigation or proceedings. No interest shall be payable with respect to prize payments made by the Department, its contractor or other agencies authorized to make such payments by direction of the Department.

- e) No claim shall be deemed complete, and no prize shall be awarded with respect to a claim, unless the claimant can and does produce a valid winning ticket to the game and prize claimed. Except as otherwise provided in subsection (d) of this Section or Section 1770.130 of this Part, claims not accompanied by a winning ticket will be rejected. Any claim received by an agent and unaccompanied by a ticket will be forwarded to the Department. Upon receipt of any such claim, the Department shall notify the claimant of the rejection, such notice to be accomplished by certified mail, with notification to the party's last completed if returned undelivered, when mailed to the party's last known address, with proper postage prepaid. Notice of rejected claims will be mailed within ten working days after receipt of the claim by the Department, at its claims validation unit in the Lottery Central offices in Springfield, Illinois.

(Source: Amended 22 Ill. Reg. 9307, effective MAY 15 1988.)

Section 1770.170 Lottery Games

- a) The Director may authorize instant ticket games in which winners are determined by matching certain of the numbers, letters, characters, words or devices as provided by the rules of the game. Instant game rules may also provide for preliminary and grand prize drawings. Preliminary drawings will be conducted at the Lottery Central offices to determine semifinalists for Grand prize drawings. Preliminary drawings will be from those tickets or shares eligible for entry into the preliminary drawing and submitted to the Department as part of the preliminary drawing pool in such manner and by such deadline as may be provided by departmental directive. Preliminary drawings shall be open to the public and notice of such drawings shall be posted in the

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

State of Illinois Center in the City of Chicago and the Department's Central offices in the City of Springfield, Illinois, at least five days prior to such drawing. Grand prize drawings shall be conducted pursuant to the rules of the game, and copies of written procedures to be followed at Grand Prize drawings will be furnished each finalist prior to a drawing.

b) The Department may offer passive lottery games wherein tickets bear pre-assigned numbers, words or symbols ~~numbers or words~~. Winners in such games shall be determined either by the results of future events or by publicly held drawings wherein randomly drawn numbers, words or symbols are selected and tickets with numbers matching those drawn shall entitle the ticket holder to the prize indicated on the ticket and in accordance with the prize structure established by the game rules.

c) The Department may offer computer operated games where players are permitted to purchase tickets bearing player-selected numbers, letters, characters, words or devices or computer selected numbers, letters, characters, words or devices, as provided by the rules of the game, for drawings which are regularly scheduled in accordance with game rules. With respect to such games, the Director shall conduct drawings using air-driven or gravity selection equipment (including but not limited to, devices utilizing air-driven ball selection, gravity mixing chamber ball selection, spinning wheel and ball selection or similar equipment, and utilizing either hollow or solid balls appropriate to the type of equipment utilized), or utilizing a computerized random selection program. In the case of drawings conducted using air-driven or gravity selection equipment, drawings shall be by random selection in the presence of a certified public accountant who will monitor the integrity of the drawing procedure. For any game utilizing computerized random selection, the selection program will be subject to a software acceptance test by the Department prior to implementation.

d) Players holding tickets with numbers, letters, characters, words or devices corresponding to those drawn in the several games, or which in combination with those drawn meet the criteria for prize award set forth in game rules, shall be entitled to prizes in the amounts set forth in game rules to be established by the Director.

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

Section 1770.190 Prize Payment, Claiming of Prizes and Transfers to Common School Fund

a) The prize structure may vary with each game and will be established at the beginning of the game by the Director. The prize structure, odds of winning, the manner in which winners are determined, the claim period for the game and various procedural matters will be set forth

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

in game rules and play instructions.

b) A prize of less than \$600 may be claimed by submitting the winning Lottery ticket to a Lottery agent location which sells the type of game won, and may be paid by the Lottery agent directly from Lottery ticket sales funds on hand after the agent follows verification procedures which establish that the ticket is a winning ticket, examines the ticket for alteration, verifies that the prize claim period has not expired, and requests proof of age from the claimant if appropriate. However, when a winning ticket is presented for payment at an agent location after the expiration of any agent claim period established in game rules, the value of the winning ticket is \$600 or more, or the Department's verification procedures require, the agent shall follow the claim procedures set forth in subsection (c) below.

c) Prizes of up to \$25,000, claimed by an individual or in the name and under the taxpayer identification number of a partnership or other artificial person, may be paid by Lottery regional or administrative offices, subject to established claim periods, procedures and validation tests. All claims for prizes of more than \$25,000, as well as claims for lesser prizes not paid by Lottery regional offices, administrative offices or by an agent pursuant to subsection (b) of this Section, must be paid centrally by the Department. Claimants may obtain claim forms from any lottery ticket sales agent, any departmental regional office, or the Department's administrative offices in Chicago or Springfield, Illinois. When initiating a claim at any of the aforesaid locations, a claimant shall complete the name and address area on the reverse of the ticket, and present proof of identification and the winning ticket. The agent or Department employee, as applicable, will assist the claimant in filling out the claim form which will be signed by the agent or employee and by the claimant or his or her authorized representative. The claimant or authorized representative will receive a copy of the claim form as a receipt. The winning ticket and a copy of the claim form will be sent to the Department's central offices in Springfield, Illinois, for verification. When the ticket is verified as a winning ticket, the prize will be mailed to the claimant. Prizes in the amount of \$1,000,000 or more may be claimed only at the Department's administrative offices in Springfield and Chicago, and absent extenuating circumstances, only by appointment so that appropriate Department personnel are available to assist in the claim process. Prizes of less than \$600 claimed by multiple winners playing as partners or as a group, with common ownership of a winning ticket at the time of the prize drawing, shall be claimed in the individual name of one of the partners or members of the group. Payment of any claim filed on behalf of such an individual group member shall be in the same manner as if filed on behalf of a single claimant.

e) Prizes of \$600 up to \$1,000,000 claimed by multiple winners playing as partners or as a group, with common ownership of a winning ticket at the time of the prize drawing, may be claimed in the individual name

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

of one of the partners or members of the group. Any claim filed on behalf of such an individual group member shall be filed in the same manner as if filed on behalf of a single claimant, but must be accompanied by a form 5754 setting forth the names, addresses, social security numbers and prize shares of all other persons entitled to a share of the prize. The Department will process a voucher payable to each individual listed on the form 5754, dividing the winnings equally, or as otherwise designated on the form 5754. The Department will then process payment vouchers to the office of the Comptroller for preparation of warrants and end of year income tax withholding documents. Claim and payment may be made in a partnership name only if the partnership furnishes a Federal Employer's Identification Number (FEIN).

f) Prizes in the amount of \$1,000,000 or more claimed by multiple winners playing as partners or as a group, with common ownership of a winning ticket at the time of the prize drawing, must be claimed in a partnership or group name. Payment will be made out to a partnership as a single payee, or to each of the individual partners or group members, as requested in writing by the winners and provided that each individual's gross annual payment will equal or exceed \$5,000. Partnership claims shall include the name, address and (if one check is requested) Federal Employer's Identification Number of the partnership, the ticket and claim form must be signed by one of the general partners on behalf of the partnership, and the claim form must be accompanied by a form 5754 setting forth the names, addresses, social security numbers and prize shares of each partner. Prior to payment, the partnership must submit a written partnership agreement evidencing, at a minimum, that an oral agreement for group play existed prior to the purchase of the winning lottery ticket. The partnership agreement shall be subject to review by the Department's legal staff, and may not contain provisions contrary to law. Where separate checks have been requested, the partnership must additionally furnish payment instructions for each partner. Group claims shall include a group name and the address and Social Security Number of the representative signing the ticket and claim form, and be accompanied by a form 5754 setting forth the names, addresses, Social Security Numbers and prize shares of all group members. A group play agreement may additionally be required. Claims by other entities such as corporations or trusts must be in the name of the entity as established prior to ticket purchase, provide the taxpayer identification number of the entity and be signed by an authorized representative. Payment will be in the name and under the taxpayer identification number of the claiming entity.

g) Lottery clubs, charitable organizations, corporations, partnerships and other "artificial" persons shall be eligible to purchase lottery tickets. However, with respect to awards of prizes for life, such "artificial" persons shall be entitled to the minimum guaranteed prize.

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

h) Prizes claimed but unpaid at the time of a prize winner's death shall be treated as follows: Except as provided herein, for the game commonly known as "Hotter" the Department and the State Treasurer will invest sufficient funds to purchase federal securities equal to the Grand Prize amount, less 1/20th of the balance of the prize to be paid in the time of the prize claim (the balance of the prize to be paid in the nineteen annual installments). The Grand Prize will be divided by the number of Grand Prize winners to determine the prize amount per winner. If the number of Grand Prize winners is greater than the number of millions of dollars in the advertised Grand Prize, the cash available will be divided by the number of winners and paid in a single lump sum. The amount of lower tier prizes will be determined by dividing each of the prize pools by the number of winners for each respective prize level, and rounding each prize payment down to the nearest fifty cents, unless otherwise provided in game rules.

1) Any prize, or portion thereof remaining unpaid at the death of a winner, may be paid to the estate of such deceased prize winner, or to the designated trustee under a revocable living trust established by the deceased prize winner, as settlor, provided that a copy of such trust has been filed with the Department, along with a notarized letter of direction from the settlor, and no written notice of revocation has been received by the Department prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the Director shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the Department harmless with respect to any claims that may be asserted against the Department arising from payment to, or through the trust.

2) The payment of prize installments due with respect to a prize winner whose death occurs prior to payment of the final installment may be accelerated under certain circumstances. At the election of the estate or successor trustee of an individual prize claimant, the estate or trustee may have the option to request, within six months from the date of death, that the annuity or equivalent investment securities procured by the Department for purposes of generating annual installment prize payments be liquidated at current market value and paid over to the personal representative of the estate or beneficiary successor trustee, as appropriate. In the case of a prize claimed by a partnership or group, the right to request liquidation of the decedent's remaining prize may be available to the decedent's personal representative or successor trustee, but only if the decedent is entitled to receive one-third or more of the claimed prize. Upon receipt of notice of election to liquidate the remaining prize, if the prize payment has been structured through purchase of an annuity and the annuity contract permits early liquidation, the Department shall promptly

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

notify the annuity company and request that the annuity be liquidated and the commuted (check) value be paid to the personal representative or successor trustee. If the Department has procured investment securities to generate income for satisfaction of future prize installments, the Department, as soon as practicable after such notification, and without jeopardy to the common investment position of securities purchased in connection with payment of future installments to other winners of Grand Prizes from the same drawing date as decedent, shall offer such securities for market sale and shall pay the personal representative or successor trustee the proceeds of sales attributable to decedent's prize. Prior to such distribution, the Department shall deduct from the proceeds of sales such sum as may be required to absorb from the share of the party requesting liquidation, any penalties or losses incidental to sale, and to restore the investment position of securities purchased with respect to any other same-date winners to the position held prior to liquidation. The balance of the proceeds of sale attributable to decedent's prize shall be distributed. Prior to authorizing accelerated liquidation of any prize, the Department shall obtain from each personal representative or successor trustee requesting such liquidation a complete release of any further liability of the Department for further payment with respect to the decedent's prize upon liquidation as provided herein, and the Department in liquidating the investment vehicle for any such prize shall be discharged of any further liability with respect to such prize beyond the amount actually realized through liquidation. Any election pursuant to this subsection must be in writing and shall be irrevocable.

3) No right to accelerate installment payments shall accrue to the estate of a prize for life winner when the guaranteed minimum payment has not yet been paid. Rather, installment payments shall continue until the guaranteed minimum prize has been paid. Cash prizes must be claimed within a claim period set by Departmental directive and the game rules establishing claim periods for the respective games offered by the Department. Unclaimed prize money shall be retained by the Director for the person entitled thereto, for the claim period after the date of the drawing in which the prize is won, as established by game rule. Thereafter, said unclaimed prize funds will be managed as provided in statute.

j) Winning tickets which provide entry into a Preliminary Grand Prize drawing for any instant game must be filed with the Department by the deadline established in the game rules. Entry tickets filed after the Preliminary Grand Prize qualification drawing for the game with respect to which the tickets were sold will be entered into the Preliminary Grand Prize Drawing pool for the next game drawing subsequent to filing of such tickets, provided that no such ticket will be eligible for entry into a subsequent drawing unless filed with

DEPARTMENT OF THE LOTTERY

NOTICE OF ADOPTED AMENDMENTS

the Department, within 120 days after of the announced end of the game for which the ticket was originally sold, provided, however, that the Director may establish lesser claim periods for specific games by directive and game rule.

k) For prizes in excess of \$10,000, a winner must identify his or her place of employment, if any, to ensure the winner is not prohibited from lottery play by the Act or these rules. For partnership claims, each partner must furnish employment information.

l) The net revenues accruing from the sale of lottery tickets shall be determined by deducting from total revenues the payments of prizes to holders of winning tickets and payment of costs incurred in the operation and administration of the Department. The Department may transfer income in excess of current operating needs to the Common School Fund.

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

Section 1770.200 Eligibility to Buy

No ticket shall be purchased by, and no prize shall be paid to any of the following persons:

- a) Any member of the Board or any officer or other person employed by the Board or by the Department; also any employees of any TV station from which lottery drawings originate who are directly involved in the production of drawing telecasts, including floor director, camera operators, stage hands, character generator operators, air control technicians, announcer and performer for each telecast; the employees of any advertising agency, public relations agency or any consultant employed by the Department who are directly involved in a lottery engagement; and further those employees, of audit firms, performing on site contractual audit services with respect to Department's operations. In the event the Director determines that purchases of tickets by employees of any vendor of goods or services to the Department or Board may jeopardize the security or integrity of the Lottery, the Director will provide by rule or by contract with the vendor that no ticket shall be purchased by, and no prize shall be paid to, any officer, or
- b) Any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any person designated in subsection (a) of this Section; or
- c) Any person under the age of 18. (Section 15 of the Act)

(Source: Amended at 22 Ill. Reg. 9307, effective MAY 15 1998)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Ambulatory Surgical Treatment Center Licensing Requirements
- 2) Code Citation: 77 Ill. Adm. Code 205
- 3) Section Numbers: 205.520
Adopted Action: Amendments
- 4) Statutory Authority: Ambulatory Surgical Treatment Center Licensing Act [210 ILCS 5]
- 5) Effective Date of Rules: May 20, 1998
- 6) Does this Rulemaking Contain an Automatic Repeal Date? No
- 7) Does this Rulemaking Contain Any Incorporations By Reference? No
- 8) Date Filed in Agency's Principal Office: May 20, 1998
- 9) Date Notice(s) of Proposal was Published in Illinois Register: July 25, 1997 - 21 Ill. Reg. 9720

- 10) Has the Joint Committee on Administrative Rules issued a Statement of Objections to this/these Rules? No

- 11) Difference Between Proposal and Final Version: The following changes were made in response to comments received during the first notice or public comment period:

No changes were made during the first notice period.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

No changes were suggested.

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

- 12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee? The Department has made all the changes to which it agreed with the Joint Committee.

- 13) Will the Rules Replace an Emergency Rule Currently in Effect? No

- 14) Are there any other Amendments Pending on this Part? Yes

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

If Yes:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
205.540	Amendments	22 Ill. Reg. 2523
205.620	Amendments	22 Ill. Reg. 2523

- 15) Summary and Purpose of Rules: Section 205.520 is being amended to delete the requirement for specific pre-operation lab tests. The facility's Consulting Committee will decide what pre-operative tests need to be conducted at that particular facility. The rules require the list or lists of tests to be in written form and to be available to all members of the medical staff.

- 16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

Ms. Gail DeVito
Division of Legal Services
Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761
217/782-2043.

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER b: HOSPITAL AND AMBULATORY CARE FACILITIES

PART 205

AMBULATORY SURGICAL TREATMENT CENTER LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section
205.110
205.115
205.118
205.120
205.125
205.130

Definitions
Incorporated and Referenced Materials
Conditions of Licensure
Application for Initial Licensure
Application for License Renewal
Approval of Surgical Procedures

SUBPART B: OWNERSHIP AND MANAGEMENT

Section
205.210
205.220
205.230
205.240

Ownership, Control and Management
Organizational Plan
Standards of Professional Work
Policies and Procedures Manual

SUBPART C: PERSONNEL

Section
205.310
205.320
205.330
205.340
205.350

Personnel Policies
Presence of Qualified Physician
Nursing Personnel
Basic Life Support
Laboratory Services

SUBPART D: EQUIPMENT, SUPPLIES, AND FACILITY MAINTENANCE

Section
205.410
205.420

Equipment
Sanitary Facility

SUBPART E: GENERAL PATIENT CARE

Section
205.510
205.520
205.530
205.540

Emergency Care
Preoperative Care
Operative Care
Postoperative Care

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

SUBPART F: RECORDS AND REPORTS

Section
205.610
205.620

Clinical Records
Statistical Data

SUBPART G: LIMITED PROCEDURE SPECIALTY CENTERS

Section
205.710
205.720
205.730
205.740
205.750
205.760

Pregnancy Termination Specialty Centers
Personnel (Repealed)
General Patient Care (Repealed)
Preoperative Requirements (Repealed)
Postoperative Requirements (Repealed)
Reports (Repealed)

SUBPART H: LICENSURE PROCEDURES

Section
205.810
205.820
205.830
205.840
205.850
205.860

Complaints
Notice of Violation
Plan of Correction
Adverse Licensure Action
Fines and Penalties
Hearings

SUBPART I: BUILDING DESIGN, CONSTRUCTION STANDARDS, AND
PHYSICAL REQUIREMENTS

Section
205.1310
205.1320
205.1330
205.1340
205.1350
205.1360
205.1370
205.1380
205.1390
205.1400
205.1410

Plant and Service Requirements
General Considerations
New Construction, Additions and Major Alterations
Minor Alterations and Remodeling Changes
Administration Department and Public Areas
Clinical Facilities
Support Service Areas
Diagnostic Facilities
Other Building Services
Details and Finishes
Construction, Including Fire Resistive Requirements, and Life Safety

SUBPART J: MECHANICAL

Section
205.1510
205.1520
205.1530

General
Thermal and Acoustical Insulation
Steam and Hot Water Systems

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

205.1540 Air Conditioning, Heating and Ventilating Systems

SUBPART K: PLUMBING AND OTHER PIPING SYSTEMS

Section

205.1610 General
205.1620 Plumbing Fixtures
205.1630 Water System
205.1640 Drainage Systems
205.1650 Identification

SUBPART L: ELECTRICAL

Section

205.1710 General
205.1720 Switchboards and Power Panels
205.1730 Panelboards
205.1740 Lighting
205.1750 Receptacles (Convenience Outlets)
205.1760 Grounding
205.1770 Equipment Installation in Special Areas
205.1780 Emergency Electric Service
205.1790 Fire Alarm System

TABLE A General Pressure Relationships and Ventilation Rates of Ambulatory Surgery Area

AUTHORITY: Implementing and authorized by the Ambulatory Surgical Treatment Center Act (210 ILCS 5).

SOURCE: Amended July 18, 1974; emergency amendment at 3 Ill. Reg. 10, p. 43, effective February 23, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 30, p. 371, effective July 23, 1979; amended at 5 Ill. Reg. 12756, effective November 4, 1981; amended at 6 Ill. Reg. 6220, 6225, and 6226, effective May 17, 1982; amended at 6 Ill. Reg. 10974, effective August 30, 1982; amended at 6 Ill. Reg. 13337, effective October 20, 1982; amended at 7 Ill. Reg. 7640, effective June 14, 1983; codified at 8 Ill. Reg. 9367; amended at 9 Ill. Reg. 12014, effective July 23, 1985; amended at 10 Ill. Reg. 8806, effective June 1, 1986; amended at 10 Ill. Reg. 21906, effective January 15, 1987; amended at 11 Ill. Reg. 14786, effective October 1, 1987; amended at 12 Ill. Reg. 3743, effective February 15, 1988; amended at 12 Ill. Reg. 15573, effective October 1, 1988; amended at 13 Ill. Reg. 16025, effective November 1, 1989; emergency amendment at 14 Ill. Reg. 5596, effective March 26, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13802, effective August 15, 1990; amended at 15 Ill. Reg. 17770, effective December 1, 1991; amended at 17 Ill. Reg. 3507, effective March 3, 1993; amended at 18 Ill. Reg. 11939, effective July 22, 1994; amended at 18 Ill. Reg. 17250, effective December 1, 1994; amended at 22 Ill. Reg. 9335, effective **MAY 20 1998**.

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

SUBPART E: GENERAL PATIENT CARE

Section 205.520 Preoperative Care

- a) Where medical evaluation, examination, and referral are made from a private physician's office, hospital, or clinic, pertinent records thereof shall be available and made part of the patient's clinical record at the time the patient is registered and admitted to the ambulatory surgical treatment center.
- b) A complete medical history shall be obtained and the physical examination shall be complete. A preanesthetic evaluation shall be completed specifically identifying any patient sensitivity or contraindications to anesthesia.
- c) The laboratory examinations required on all admissions shall be determined by the Consulting Committee and shall be consistent with the scope and nature of the ambulatory surgical treatment center. The required list or lists of tests shall be in written form and shall be available to all members of the medical staff. A--hemoglobin--or hematocrit--and--examination--of--the--urine--for--sugar--protein--and acetone--shall--be--performed--prior--to--the--following--procedures:
 - 1) those performed with general anesthesia
 - 2) those performed with intravenous sedation
 - 3) those performed with spinal or epidural anesthesia
 - 4) those performed with any other specific anesthesia--technique designated by the consulting committee; and
 - 5) those performed to terminate pregnancy.
- d) Prior to procedures performed to terminate pregnancy, the physician shall establish the diagnosis of pregnancy by appropriate clinical evaluation and testing. In addition, the patient's blood Rh factor shall be determined.
- e) A written statement indicating informed consent and a signed authorization by the patient for the performance of the specific surgical procedure shall be procured and made part of the patient's clinical record.
- f) Surgical procedures shall not be performed on patients' patients having medical, surgical, or psychiatric conditions or complications as specified by the Consulting Committee consulting in the facility's written policies.
- g) Prior to admission to the facility for a surgical procedure, the patient shall be informed of the following:
 - 1) Patients who receive general anesthesia, intravenous sedation, spinal or epidural anesthesia, or any other specific anesthesia technique designated by the Consulting Committee consulting committee, must not attempt to drive a motor vehicle immediately upon discharge from the facility.
 - 2) Patients must make arrangements prior to admission for safe transportation from the facility upon discharge to return to home or to a similar environment.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 9335.3 effective
MAY 20 1998)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Hospital Licensing Requirements
- 2) Code Citation: 77 Ill. Adm. Code 250
- 3) Section Numbers: Adopted Action:
250.1305 Amendments
250.1320 Amendments
250.1520 Amendments
250.2140 Amendments
- 4) Statutory Authority: Hospital Licensing Act [210 ILCS 85]
- 5) Effective Date of Rules: May 20, 1998
- 6) Does this Rulemaking Contain an Automatic Repeal Date? No
- 7) Does this Rulemaking Contain Any Incorporations By Reference? No
- 8) Date Filed in Agency's Principal Office: May 20, 1998
- 9) Date Notice(s) of Proposal was Published in Illinois Register: October 3, 1997 - 21 Ill. Reg. 13264
- 10) Has the Joint Committee on Administrative Rules issued a Statement of Objections to this/these Rules? No
- 11) Difference Between Proposal and Final Version: The following changes were made in response to comments received during the first notice or public comment period:
1. In the Main Source Note and Section Source Notes, "21 Ill. Reg." was changed to "22 Ill. Reg."
 2. In Sections 250.1305(d)(3) and 250.1320(c)(9)(C), "procedures" was changed to "procedure's".
 3. In Section 250.2140(b)(2), (3), (4), (5) and (6), "to" was stricken out.
 4. In Section 250.2140(b)(7), "the Pharmacy and Therapeutics Committee shall" was stricken out.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

In Sections 250.1305(d)(3) and 250.1320(c)(9)(C), "the procedure's being performed" was changed to "performance of the procedure".

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

- 12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee? The Department has made all the changes to which it agreed with the Joint Committee.

- 13) Will the Rules Replace an Emergency Rule Currently in Effect? No

- 14) Are there any other Amendments Pending on this Part? Yes

Section Numbers Proposed Action Illinois Register Citation

250.310	Amendments	22 Ill. Reg. 6088
250.435	New Section	22 Ill. Reg. 6088

- 15) Summary and Purpose of Rules: Section 250.1305 is being amended to permit the presence of a parent, guardian, or other individual selected by the parent or guardian, in the operating room during the induction of anesthesia on an individual who is 12 years of age or younger. The hospital must first adopt a policy on this matter, which must be approved by the Governing Board and which shall include conditions for written consent, medical record notation, safeguards against introduction of infection, additional staff, and removal of the individual from the operating room if necessary.

Section 250.1320 is being amended to permit the presence of a parent or guardian of a child 12 years of age or younger to be present with the child in recovering from a surgical procedure. The hospital must have a policy in place that includes written consent, medical record notation, safeguards against the introduction of infection, additional staff, ensurance of the privacy of other recovering patients, and removal of the parent or guardian from the recovery room if necessary.

Section 250.1520 is being amended to include reporting to the Department of any incident or occurrence in a hospital that could be considered a catastrophe or creates an immediate jeopardy and/or dangerous threat, and that requires the transfer of patients to other parts of the facility or other facilities, including but not limited to fire, flood, or power failure.

Section 250.2140 is being amended to include more general language on the composition of the Pharmacy and Therapeutics Committee.

- 16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Ms. Gail Devito
Division of Legal Services
Department of Public Health
535 West Jefferson
Fifth Floor
Springfield IL 62761
217/782-2043
E-Mail: (rules@idph.state.il.us).

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 250

HOSPITAL LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section	
250.110	Application for and Issuance of Permit to Establish a Hospital
250.120	Application for and Issuance of a License to Operate a Hospital
250.130	Administration by the Department
250.140	Hearings
250.150	Definitions
250.160	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION AND PLANNING

Section	
250.210	The Governing Board
250.220	Accounting
250.230	Planning
250.240	Admission and Discharge
250.250	Visiting Rules
250.260	Patients' Rights
250.265	Language Assistance Services
250.270	Manuals of Procedure
250.280	Agreement with Designated Organ Procurement Agencies

SUBPART C: THE MEDICAL STAFF

Section	
250.310	Organization
250.315	House Staff Members
250.320	Admission and Supervision of Patients
250.330	Orders for Medications and Treatments
250.340	Availability for Emergencies

SUBPART D: PERSONNEL SERVICE

Section	
250.410	Organization
250.420	Personnel Records
250.430	Duty Assignments
250.435	Health Care Worker Background Check
250.440	Education Programs
250.450	Personnel Health Requirements

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 250

Section	
250.510	Laboratory Services
250.520	Blood and Blood Components
250.525	Designated Blood Donor Program
250.530	Proficiency Survey Program (Repealed)
250.540	Laboratory Personnel (Repealed)
250.550	Western Blot Assay Testing Procedures (Repealed)

SUBPART F: RADIOLOGICAL SERVICES

Section	
250.610	General Diagnostic Procedures and Treatments
250.620	Radioactive Isotopes
250.630	General Policies and Procedures Manual

SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

Section	
250.710	Classification of Emergency Services
250.720	General Requirements
250.725	Notification of Emergency Personnel
250.730	Community or Area wide Planning
250.740	Disaster and Mass Casualty Program
250.750	Emergency Services for Sexual Assault Victims

SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

Section	
250.810	Applicability of Other Parts of These Requirements
250.820	General
250.830	Classifications of Restorative and Rehabilitation Services
250.840	General Requirements for all Classifications
250.850	Specific Requirements for Comprehensive Physical Rehabilitation Services
250.860	Medical Direction
250.870	Nursing Care
250.880	Additional Allied Health Services

SUBPART I: NURSING SERVICE AND ADMINISTRATION

Section	
250.910	Nursing Services
250.920	Organizational Plan
250.930	Role in hospital planning

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

250.940	Job descriptions
250.950	Nursing committees
250.960	Specialized nursing services
250.970	Nursing Care Plans
250.980	Nursing Records and Reports
250.990	Unusual Incidents
250.1000	Meetings
250.1010	Education Programs
250.1020	Licensure
250.1030	Policies and Procedures
250.1040	Patient Care Units
250.1050	Equipment for Bedside Care
250.1060	Drug Services on Patient Unit
250.1070	Care of Patients
250.1080	Admission Procedures Affecting Care
250.1090	Sterilization and Processing of Supplies
250.1100	Infection Control

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section	Surgery
250.1210	Surgery Staff
250.1220	Policies & Procedures
250.1230	Surgical Privileges
250.1240	Surgical Emergency Care
250.1250	Operating Room Register
250.1260	Surgical Patients
250.1270	Equipment
250.1280	Safety
250.1290	Operating Room
250.1300	Visitors in Operating Room
250.1310	Cleaning of Operating Room
250.1320	Regulations-for Postoperative Recovery Facilities

SUBPART K: ANESTHESIA SERVICES

Section	Anesthesia Service
250.1410	

SUBPART L: RECORDS AND REPORTS

Section	Medical Records
250.1510	Reports
250.1520	

SUBPART M: FOOD SERVICE

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

Section	Dietary Department Administration
250.1610	Facilities
250.1620	Menus and Nutritional Adequacy
250.1630	Diet Orders
250.1640	Frequency of Meals
250.1650	Therapeutic (Modified) Diets
250.1660	Food Preparation and Service
250.1670	Sanitation
250.1680	

SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

Section	Housekeeping
250.1710	Garbage, Refuse and Solid Waste Handling and Disposal
250.1720	Insect and Rodent Control
250.1730	Laundry Service
250.1740	Soiled Linen
250.1750	Clean Linen
250.1760	

SUBPART O: MATERNITY AND NEONATAL SERVICE

Section	Applicability of other Parts of these regulations
250.1810	Maternity and Neonatal Service (Perinatal Service)
250.1820	General Requirements for all Maternity Departments
250.1830	Discharge of Newborn Infants from Hospital
250.1840	Rooming-In Care of Mother and Infant
250.1850	Special Programs
250.1860	Single Room Maternity Care
250.1870	

SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL PLANT, SITE, EQUIPMENT, AND SYSTEMS--HEATING, COOLING, ELECTRICAL, VENTILATION, PLUMBING, WATER, SEWER, AND SOLID WASTE DISPOSAL

Section	Maintenance
250.1910	Emergency electric service
250.1920	Water Supply
250.1930	Ventilation, Heating, Air Conditioning, and Air Changing Systems
250.1940	Grounds and Buildings Shall be Maintained
250.1950	Sewage, Garbage, Solid Waste Handling and Disposal
250.1960	Plumbing
250.1970	Fire and Safety
250.1980	

SUBPART Q: CHRONIC DISEASE HOSPITALS

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Section
250.2100 Definition
250.2020 Requirements

SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

Section
250.2110 Service Requirements
250.2120 Personnel Required
250.2130 Facilities for Services
250.2140 Pharmacy and Therapeutics Committee

SUBPART S: PSYCHIATRIC SERVICES

Section
250.2210 Applicability of other Parts of these Regulations
250.2220 Establishment of a Psychiatric Service
250.2230 The Medical Staff
250.2240 Nursing Service
250.2250 Allied Health Personnel
250.2260 Staff and Personnel Development and Training
250.2270 Admission, Transfer and Discharge Procedures
250.2280 Care of Patients
250.2290 Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care
250.2300 Diagnostic, Treatment and Physical Facilities and Services

SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

Section
250.2410 Applicability of these Standards
250.2420 Submission of Plans for New Construction, Alterations or Additions to Existing Facility
250.2430 Preparation of Drawings and Specifications -- Submission Requirements
250.2440 General Hospital Standards
250.2450 Details
250.2460 Finishes
250.2470 Structural
250.2480 Mechanical
250.2490 Plumbing and Other Piping Systems
250.2500 Electrical Requirements

SUBPART U: CONSTRUCTION STANDARDS FOR EXISTING HOSPITALS

Section
250.2610 Applicability of these Standards

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

250.2620 Codes and Standards
250.2630 Existing General Hospital Standards
250.2640 Details
250.2650 Finishes
250.2660 Mechanical
250.2670 Plumbing and Other Piping Systems
250.2680 Electrical Requirements

SUBPART V: SPECIAL CARE AND SPECIAL SERVICE UNITS

Section
250.2710 Special Care and/or Special Service Units
250.2720 Day Care for Mildly Ill Children

SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

Section
250.2810 Applicability of Other Parts of These Requirements
250.2820 Establishment of an Alcoholism and Intoxication Treatment Service
250.2830 Classification and Definitions of Service and Programs
250.2840 General Requirements for all Hospital Alcoholism Program Classifications
250.2850 The Medical and Professional Staff
250.2860 Medical Records
250.2870 Referral
250.2880 Client Legal and Human Rights

ILLUSTRATION A Seismic Zone Map
APPENDIX A Codes and Standards (Repealed)

EXHIBIT A Codes (Repealed)
EXHIBIT B Standards (Repealed)
EXHIBIT C Addresses of Sources (Repealed)
TABLE A Measurements Essential for Level I, II, III Hospitals
TABLE B Sound Transmission Limitations in General Hospitals
TABLE C Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)
TABLE D General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)
TABLE E Piping Locations for Oxygen, Vacuum and Medical Compressed Air
TABLE F General Pressure Relationships and Ventilation of Certain Hospital Areas
TABLE G Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17 Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 3234, effective February 15, 1996; emergency expired on May 31, 1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 9342, effective MAY 20 1998.

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section 250.1305 Visitors in Operating Room

- a) No lay visitor shall be given access to the operating rooms during surgery.
- b) Only individuals in the categories authorized herein and individuals authorized in accordance with hospital policy shall be allowed access to the operating rooms during surgery. Individuals authorized herein shall be members of the medical staff, persons covered by Section 250.310(a)(14), persons employed by the hospital and assigned to the operating room, and persons participating in residency or clinical training programs approved by the Department of Professional Regulation Registration--and Education under the Medical Practice Act of 1987. (4111-Rev-Stat--1985--ch--111-1/27-par--4461-et-seq--)
- c) Where hospital policy approved by the governing Board permits other persons to be in attendance in the operating room during surgery, the

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

policy shall provide for the screening of such persons to ensure the necessity of their presence, such as documentation that they have appropriate licensure, qualifications or competence and that the person performing the procedure, the patient's attending physician and the chairman of the department of surgery in departmentalized hospitals have agreed to allow such access.

- d) The presence of a parent or guardian, or other individual selected by a child's parent or guardian, may be allowed in the operating room during the induction of anesthesia on an individual who is 12 years of age or younger, at the discretion of the hospital if the hospital has first adopted a policy on the matter, approved by the Governing Board, which shall include, but not be limited to, the following conditions:
 - 1) Written consent of the parent, guardian or other individual, the anesthesia provider and the physician performing the surgery;
 - 2) Notation in the patient's medical record of the presence of additional persons in the operating room during the induction of anesthesia;
 - 3) Application of safeguards against the introduction of infection or other hazards by the parent, guardian or other individual, including orientation, education and training of the person prior to performance of the procedure; this shall include, at a minimum, specifics regarding the procedure and what can be expected, basic infection control practices expected of the person, and instruction that the person must leave the operating room after the induction of anesthesia is completed;
 - 4) Provision of at least one additional staff person in the operating room assigned to oversee, supervise and assist the parent, guardian or other designated individual for the period of time the parent, guardian or designated individual is present; and
 - 5) If at any point during the induction of the anesthesia it is determined by the physician performing the surgery or the attending anesthesia provider that the parent, guardian or other individual poses a threat to the safe completion of the induction of the anesthesia, he or she may require the parent, guardian or other individual to leave the operating room.

(Source: Amended at 22 Ill. Reg. 9342, effective MAY 20 1998.)

Section 250.1320 Regulations for Postoperative Recovery Facilities

- a) Provision and use of postoperative recovery facilities
 - 1) Postoperative Post-operative recovery facilities shall be provided by all hospitals in which surgery is performed. They shall be in a separate room where patients who have undergone surgical procedures can be immediately observed and receive specialized care by selected and trained personnel, and where,

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

when necessary, prompt emergency care can be initiated.

- 2) The services of the postoperative recovery room may be utilized for postpartum if the delivery room or place of delivery is in close proximity to the postoperative recovery room. Only clean (non-infected or non-infectious) postpartum patients may be admitted to the postoperative recovery room and may after appropriate observation be returned to the maternity department.

b) Personnel

- 1) Physician
 - A) A physician shall be responsible for the conduct of the recovery room, for the training of recovery room personnel, and for the establishment of admission and discharge policies and procedures.
- 2) Nurse
 - A) A registered nurse who has education and experience in postoperative recovery room care shall supervise all personnel performing nursing service functions.
 - B) A registered nurse shall be in attendance at all times when patients are in the recovery room.
 - C) There shall be sufficient nursing personnel to provide the specialized care required for the post surgical patient. It is recommended that a ratio of one nursing personnel to three patients be maintained at all times.
 - D) Nursing personnel shall be assigned permanently to the postoperative recovery room when patients are present.

c) Practices for operation of postoperative recovery rooms-

- 1) Only clean surgical cases shall be admitted to the postoperative recovery room.
- 2) Contaminated cases shall be returned to the isolation room or a private room. When a separate isolation facility is within or adjacent to the postoperative recovery room, contaminated cases may be admitted to it.
- 3) A member of the medical staff shall provide initial orders for the care of each patient upon admission.
- 4) A member of the medical staff shall be responsible for the patient's discharge from the recovery room.
- 5) Anesthetized patients shall be constantly attended. Side rails shall be attached to movable carts and beds and raised above mattress level when occupied by anesthetized patients. Cribs shall be provided for the anesthetized or post surgical child.
- 6) Written policies and procedures, which are reviewed regularly and revised as necessary, shall be established.
- 7) A complete orientation program and continuing in-service education program shall be provided for all personnel assigned to the recovery room.
- 8) Personnel with communicable diseases shall be excluded from the recovery room.
- 9) No visitors shall be permitted in the postoperative recovery room, except in the case where a hospital has adopted a policy.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

approved through the Governing Board, that allows a parent or guardian, or other individual selected by a child's parent or guardian, of a child 12 years of age or younger to be present with the child in recovering from a surgical procedure. Before allowing individuals to be present in the recovery area with their child, the hospital shall have a policy in place that includes at least the following:

- A) Written consent of both the parent, guardian or other individual and the physician performing the surgery;
 - B) Notation in the patient's medical record of the presence of additional persons in the postoperative recovery room during recovery of the child from a surgical procedure;
 - C) Application of safeguards against the introduction of infection or other hazards by the parent, guardian or other individual including orientation, education and training of the person prior to the performance of the procedure; this shall include, at minimum, specifics regarding the procedure and recovery, what can be expected, and basic infection control practices expected of the person;
 - D) Provision of at least one additional staff person in the recovery room assigned to oversee, supervise and assist the parent, guardian or other designated individual for the period of time the parent, guardian or designated individual is present;
 - E) Provision of safeguards to ensure the privacy of other patients who may be recovering from surgical procedures, which may include separate rooms or some other type of separation for recovery of children who would have a parent present. Whatever method is chosen must allow for constant attention of anesthetized patients by recovery room staff; and
 - F) If at any point during the recovery of the minor patient it is determined by the recovery room personnel that the parent, guardian or other individual poses a threat to the safe recovery of the patient, he or she may require the parent, guardian or other individual to leave the recovery room.
- d) Drugs, supplies and equipment Equipment Drugs, supplies and equipment shall be immediately and continually accessible in the unit for postoperative care including emergencies. These shall include cardiac-respiratory resuscitation materials.
- e) Accommodations and facilities for recovery rooms Accommodations--and Facilities--for-Recovery-Rooms Recovery of surgical and obstetrical patients shall be provided and shall contain a drug distribution station, handwashing facilities, charting facilities, clinical sink with bedpan flushing device, and storage space for supplies and equipment. Additional recovery space(s) may be necessary to

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

accommodate surgical outpatients. For more detailed information see Subpart T of this Part these requirements.

(Source: Amended at 22 Ill. Reg. 93 42, effective MAY 20 1998)

SUBPART L: RECORDS AND REPORTS

Section 250.1520 Reports

- a) Each hospital shall submit reports containing such pertinent data as may reasonably be required by the Department.
- b) In the reporting of communicable disease cases the hospital shall comply with the 77 Ill. Adm. Code 690, the the "Control of Communicable Diseases Code" as issued by the Department.
- c) See Subpart O, Section 250.1830 and Section 250.1840 of this Part, regarding reports pertaining to mothers and infants, and regarding children to be discharged to a person other than a natural parent.
- d) See Subpart O, Section 250.1830 of this Part, regarding birth, stillbirth, and death reports.
- e) The death of a pregnant woman or the death of a woman within 90 days following the termination of a pregnancy shall be reported to the Department as required in Section 250.1830(i)(2) of this Part. This is required regardless of the type of hospital or the reason for the patient's admission.
- f) Any incident or occurrence in a hospital that could be considered a catastrophe or creates an immediate jeopardy and/or dangerous threat and that requires the transfer of patients to other parts of the facility or other facilities, including but not limited to fire, flood, or power failure, shall be reported to the Department within two working days after its occurrence.

(Source: Amended at 22 Ill. Reg. 93 42, effective MAY 20 1998)

SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

Section 250.2140 Pharmacy and Therapeutics Committee

- a) In accordance with the bylaws, rules and regulations of the medical staff, an interdisciplinary committee acceptable to the Board shall be appointed to assure the responsibility for the functions of the service.
- b) the voting members of this committee shall include the registered pharmacist directing the services, members of the medical staff administration and nursing. The committee shall meet not less than quarterly and record minutes of their meetings, which shall reflect their activities.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

c) The functions of the committee shall include but not be limited to the following:

- 1) assist in the formulation of rules and regulations relating to the selection, evaluation, distribution, and administration of drugs and medicines in the hospital;
- 2) to establish control and reporting procedures for the use of investigational (experimental, trial use) drugs and medicines;
- 3) to promote educational programs on drugs and drug therapy for the medical and nursing staffs and other appropriate personnel;
- 4) to develop and update the Service Policy and Procedure Manual, the Hospital Formulary or Drug List;
- 5) to review and act on recommendations, drug usage reports, medication error or incident reports, storage, distribution and administration of drugs;
- 6) to develop policies and procedures (which shall be approved by the Medical Staff and Board) to provide for the administration of identified drugs and medicines by qualified professional persons who are authorized by law to administer such drugs and medicines in the course of practicing their professions; and
- 7) the pharmacy and therapeutics committee shall establish the guidelines for the education, in-service training and supervision of all personnel administering drugs and medications.

(Source: Amended MAY 20 1998)

22 Ill. Reg.

93 42, effective

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Illinois Swimming Pool and Bathing Beach Code
- 2) Code Citation: 77 Ill. Adm. Code 820
- 3) Section Numbers:
 820.10 Adopted Action:
 Amendment
 820.250 Amendment
 820.400 New Section
 820.500 Renumbered, Amendment
- 4) Statutory Authority: Implementing and authorized by Section 13 of the Swimming Pool and Bathing Beach Act [210 ILCS 125/13]
- 5) Effective Date of Amendments: May 15, 1998
- 6) Does this Rulemaking Contain an Automatic Repeal Date? No
- 7) Does this Rulemaking Contain any Incorporation by Reference? No
- 8) Date Filed in Agency's Principal Office: May 15, 1998
- 9) Date Notice of Proposed Amendments was Published in the Illinois Register: 21 Ill. Reg. 7089 - June 13, 1997
- 10) Has the Joint Committee on Administrative Rules Issued a Statement of Objection to this Rulemaking: No
- 11) Difference Between Proposal and Final Version: The following modifications were made to Section 820.400 of the Swimming Pool and Bathing Beach Code in response to public hearing testimony, written public comments and requests for modifications from the Joint Committee on Administrative Rules:

 In Section 820.400(b) the requirement that the wading area be separated from swimming and diving areas at the 5 foot depth has been changed to "at a water depth of five feet or less".

 In the bathroom/toilet requirements of Section 820.300(d)(1), "50 or fewer persons" has been changed to "50 or fewer bathers".

 In Section 820.400(e)(11) the requirement for twice weekly refuse removal has been changed to require refuse removal when necessary.

 The requirement for beaches to be equipped with a first aid kit has been deleted from Section 820.400(g)(2).

 In Section 820.400(h)(1)(4) the requirement for a majority of members of a homeowners association to agree to a waiver request has been modified to

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

allow the waiver request to be based on a decision of a majority of the board of directors of the homeowner's association, with notification to the association's members of the decision to request a waiver.

Section 820.400(h)(3) has been revised to specify that once a waiver has been issued, it will be valid indefinitely, unless the beach is closed due to failure to meet the bacteriological water quality results specified in the rules or failure to submit water samples as required in the rules. If a beach is closed under the above provision, the beach may not be opened again until toilet facilities are provided and the homeowner's association must complete the waiver request process again in order to obtain a new waiver.

In Section 820.400(h)(4)(C) the requirement that a waiver shall not apply on any day when the number of bathers is greater than 50, has been revised to specify that a waiver shall not apply on any day the homeowners association anticipates that the number of bathers will exceed 50 (i.e., holiday weekends, parties).

12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee? All changes requested by the Joint Committee on Administrative Rules have been made.

13) Will the Rulemaking Replace an Emergency Rule Currently in Effect? No

14) Are there any other Amendments Pending on this Part? No

15) Summary and Purpose of Rulemaking: This rulemaking provides a mechanism for not-for-profit homeowner's associations that own and operate a beach that serves 50 or fewer swimmers per day to request a waiver from the Department's requirements for toilets to be provided at all licensed beaches. The rulemaking specifies the conditions that must be met before a waiver will be granted. Beaches that have been closed due to unsatisfactory water quality would not be eligible for a waiver for the current swimming season or the subsequent season, unless the Department or a local health department determines that the cause of the unsatisfactory water quality was not an absence of toilet facilities at the beach. A reference in Section 820.250 to the water quality standards of Section 820.500 is updated to reflect the renumbering of Section 820.500 to 820.400. Additionally, definitions of "homeowner's association" and "infant" are added.

16) Information and Questions Regarding this Adopted Rulemaking Should be Directed to:

Gail M. DeVito
Division of Legal Services

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

Illinois Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, IL 62761
(217) 782-2043
(E-mail: rules@dph.state.il.us)

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER n: RECREATIONAL FACILITIES

PART 820
ILLINOIS
SWIMMING POOL AND BATHING BEACH CODE

SUBPART A: GENERAL

Section	Definitions
820.10	
820.20	Incorporated Materials

SUBPART B: SWIMMING POOLS AND BATHING BEACHES

Section	permits
820.100	
820.110	Water Supplies
820.120	Sewage Disposal
820.130	Food Service Sanitation

SUBPART C: SWIMMING POOL DESIGN REQUIREMENTS

Section	General Design Requirements
820.200	
820.210	Swimming Pool Water Treatment System
820.220	Swimming Pool Bather Preparation Facilities
820.230	Wading Pools
820.240	Spray Pools
820.250	Water Slides
820.260	New Equipment, Construction and Materials

SUBPART D: SWIMMING POOL OPERATIONAL REQUIREMENTS

Section	Personnel
820.300	
820.310	Safety Equipment
820.320	Water Quality
820.330	Swimming Pool Closing
820.340	Operation and Maintenance
820.350	Operation Reports and Routine Sampling
820.360	Personal Regulations
820.370	Swimming Suits and Towels Furnished by Management
820.380	Wading Pools and Spray Pools
820.390	Refuse Disposal

SUBPART E: BATHING BEACH DESIGN AND OPERATION

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Section	Illustrations
820.400	Minimum Sanitary Requirements for Bathing Beaches
820.500	Minimum Sanitary Requirements for Bathing Beaches (Renumbered)
APPENDIX A	
ILLUSTRATION A	Slope of Pool Bottom
ILLUSTRATION B	Pool Walls
ILLUSTRATION C	General Pool Diving Area Dimensions
ILLUSTRATION D	Pools with Diving Facilities in Excess of Three Meters in Height
ILLUSTRATION E	Slide Dimensions
ILLUSTRATION F	Slide Position
ILLUSTRATION G	Flow Meter Installation
ILLUSTRATION H	Skimmer Construction
ILLUSTRATION I	Installation of a Pressure Sand Filter System
ILLUSTRATION J	Installation of a Pressure Diatomaceous Earth Filter System
ILLUSTRATION K	Installation of a Vacuum Filter System
ILLUSTRATION L	Chlorine Injection into Return Line to Pool Using Pump Discharge Pressure
ILLUSTRATION M	Chlorine Injection into Return Line to Pool Using External Water Source Pressure
ILLUSTRATION N	Chlorine Injection into Return Line to Pool Using Booster Pump
APPENDIX B	
TABLE A	Dimensions of Swimming Pools with Diving Facilities in Excess of Three Meters in Height
TABLE B	First Aid Kit Contents
TABLE C	Flows Carried by Inlets
TABLE D	Sizing Swimming Pool Chlorinators
TABLE E	Shower, Lavatory and Toilet Fixtures Required Per Bather Load

AUTHORITY: Implementing and authorized by the Swimming Pool and Bathing Beach Act [210 ILCS 125].

SOURCE: Adopted October 22, 1974; amended and effective February 9, 1976; amended at 4 Ill. Reg. 46, p. 1283, effective November 5, 1980; amended at 5 Ill. Reg. 9593, effective September 16, 1981; rules repealed and new rules adopted at 5 Ill. Reg. 13623, effective December 2, 1981; amended and codified at 8 Ill. Reg. 12366, effective July 5, 1984; amended at 11 Ill. Reg. 12308, effective July 15, 1987; amended at 14 Ill. Reg. 786, effective January 1, 1990; amended at 20 Ill. Reg. 6971, effective May 25, 1996; emergency amendment at 21 Ill. Reg. 7536, effective May 28, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 9857, effective MAY 15 1998.

SUBPART A: GENERAL

Section 820.10 Definitions

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

"Act" means the Swimming Pool and Bathing Beach Act [210 ILCS 125] (---Rev--Stat--1985, ch--111-177, pars--1201-et-seq--).

"Approval" means compliance with the Act and this Part.

"Bather Load" means the maximum number of persons which may use the pool at one time without creating undue health or safety hazards. (See Section 820.200(b)).

"Community Water System" means a public water system which serves at least 15 service connections used by residents or regularly serves at least 25 residents for at least 60 days a year.

"Construction" means the placement or erection of structures or earthworks; land filling, excavation or non-agricultural alteration of the ground surface; installation of public utilities; channel modification; storage of materials or any other activity undertaken to modify the existing physical features of a flood plain with respect to the storage and conveyance of flood waters.

"Diving Pool" means a pool designed and intended for use exclusively by divers.

"Office Division of Water Resources" means the Illinois Department of Natural Resources Transportation, Office Division of Water Resources, 3215 Executive Park Dr. Department--of--Transportation--Administration Building--Room-300, Springfield, IL 62703 ---62764.

"Flume" means an inclined channel which conveys the water and the slide participant from the top of the slide to the plunge pool.

"Homeowner's Association" is a not-for-profit corporation comprised of members who have common ownership interest in property owned or operated by the association for the benefit of all the members.

"Infant" means a minor who is not toilet-trained.

"Inlet" means an opening or fitting through which filtered water enters the pool.

"Main Drain" means the outlet or outlets in the floor of the pool.

"Make-up Water" means the water added to a pool to replace that which is lost.

"National Electrical Code" means a code for the practical safe-guarding of persons and of buildings and their contents from hazards arising from the use of electricity for light, heat, power, or

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

radio signalling, prepared by the National Fire Protection Association (NFPA), 60 Batterymarch St., Boston, Mass. 02110. (1984 Edition)

"National Sanitation Foundation (N.S.F.);" means a non-profit, non-commercial organization which wholly owns the National Sanitation Foundation Testing Laboratory, 2355 West Stadium Boulevard, P. O. Box 1468, Ann Arbor, Michigan 48106.

"Non-Community Water System" means a public water system that is not a community water system, that has at least 15 service connections used by non-residents, or regularly serves 25 or more non-resident individuals daily for at least 60 days a year.

"Perimeter Overflow Systems" means a channel at the normal water level normally extending completely around the pool water surface. Also known as an overflow gutter.

"Permit" means a certificate issued by the Department allowing the construction of a new public swimming pool or public bathing beach under the provisions of the Act.

"Plumbing" shall have the meaning set forth in the Illinois State Plumbing Code (77 Ill. Adm. Code 890).

"Plunge Pool" means a pool or artificial body of water into which a person exits from a waterslide.

"Pool Depth" means the distance between the pool floor and the perimeter overflow system lip or midpoint on the skimmer throat weir level.

"Public Water System" means a system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. The term Public Water System includes any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"Recirculation Piping" means the piping from the pool to the filters and back to the pool, through which the pool water circulates.

"Sewage" means any liquid waste containing animal or vegetable matter in suspension solution, and includes liquids containing chemicals in solution.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

"Shallow Pool" means a pool, other than a wading pool or spray pool as defined in these regulations, in which the water depth does not exceed five feet at any point.

"Skimmer" means a mechanical device connected to the recirculation piping which is used to skim the pool surface.

"Special Flood Hazard Area" means an area having special flood hazards and shown as such on a Regulatory Flood Plan Map (published and available from the Office Division of Water Resources) or Flood Insurance Rate Map or Flood Hazard Boundary Map published by the Federal Insurance Administration of the Federal Emergency Management Agency.

"Spray Pool" means an artificially constructed area over which water is sprayed but is not allowed to pool.

"State Flood Plain Regulations" means the rules set forth for the Regulation of Construction within Flood Plains (92 Ill. Adm. Code 706), issued by the Office Division of Water Resources.

"Swimming Pool Manager/Operator" means the person responsible for the actual daily operation, or for the supervision of the operation, of a swimming pool.

"Transition Point" means the point of the floor of the pool where an abrupt change in slope occurs between the shallow and deep areas of the pool.

"Turnover" means the time required to recirculate the water volume of the pool through the filtration system.

"Therapy Pool" means a pool intended only for medical treatment or muscle relaxation and not intended for swimming or instruction in swimming.

"Wading Pool" means a pool intended only for small children. It is not used for swimming nor instruction in swimming. The maximum depth is less than 30 inches.

"Water Slide" means a slide which consists of one or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

"Wave Pool" means a swimming pool designed for the purpose of producing wave action in the water.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 9357, effective MAY 15 1993)

SUBPART C: SWIMMING POOL DESIGN REQUIREMENTS

Section 820.250 Water Slides

- a) General. Water slides are subject to the rules stated in this Subpart when the water slide:
- 1) Is located in a recreational area regulated licensed under authority of the Campground Licensing and Recreational Area Act [210 ILCS 95] Recreational Area Licensing Act (411 Rev. Stat. 1981 Ch. III-1/2, paras. 761 et seq.) or
 - 2) Exits into an existing licensed swimming pool, or bathing beach; or
 - 3) Exits into a pool designed and intended for general purpose swimming; or
 - 4) Is interconnected with a general purpose swimming pool, either directly, or through the recirculation or water treatment equipment for the swimming pool.
- b) Turnover Rate. The water turnover rate shall be 2 hours or less, except where a swimming pool is used as a plunge pool. In this case, the turnover rate shall be in accordance with Section 820.210(h).
- c) Walkways. A four foot minimum width, non-slip, paved walkway or steps shall be provided between the plunge pool deck and the top of the flume(s).
- d) Decks.
- 1) The deck around the plunge pool shall be at least four feet wide, except at the side where the flume terminates. The plunge pool decks shall slope away from the plunge pool at least two inches in ten feet.
 - 2) Deck drains shall be provided in accordance with Section 820.200(1)(6).
- e) Steps. Steps leading into the pool shall comply with Section 820.200(m)(3) and (4).
- f) Enclosure. The surge pool shall be enclosed in accordance with Section 820.200(a) to prevent access by individuals in the slide area.
- g) Flumes.
- 1) Position. A flume shall be perpendicular to the plunge pool wall for a distance of at least 10 feet from the exit end of the flume. The last 10 feet of the flume shall have a slope which is not steeper than 1 in 10.
 - 2) Clearances. The distance between the side of a flume terminus and a plunge pool side wall shall be at least five feet unless the flume terminus is designed to move sliders away from the wall and the distance to an adjacent flume is at least 8 feet. The distance between sides of adjacent flume terminuses shall be at least five feet. The distance between a flume terminus and the

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- opposite side of the plunge pool shall be at least 25 feet. Steps shall not infringe on this area.
- 3) Elevation. A flume shall terminate between a depth of six inches below the plunge pool operating water surface level and two inches above the water surface level unless the slide is provided with an exit flume designed by the manufacturer for safe exit at lesser depths.
 - 4) All curves, turns, and tunnels on the path of a flume shall be designed and constructed in accordance with the manufacturer's instructions.
 - 5) The construction, dimensions and the mechanical attachment of the flume components shall be such that the surface of the flume is smooth and continuous for its entire length.
 - A) Flumes and pools shall be watertight and their surfaces shall be chemically inert, nontoxic, smooth, and easy to clean.
 - B) Each flume shall have a distinctive line or marking to indicate the starting zone in which only one rider at a time is permitted. This line shall be in accordance with the manufacturer's specifications or 30', whichever is the longer distance. A sign shall be posted at the top of the long distance. A sign shall be posted at the top of the slide warning all sliders not to proceed down the slide until the slider in front of him has passed this line.
- h) Plunge Pools
- 1) Depths. The plunge pool operating water depth at the end of a flume shall be between 2 1/2 and 3 1/2 feet unless the slide is provided with an exit flume designed by the manufacturer for safe exit at a lesser depth. This depth shall be maintained in front of the flume for a distance of at least ten feet, from which the plunge pool floor may have a constant slope upward to a minimum water depth of two feet. This slope shall not be steeper than 1 vertical in 12 horizontal. The bottom shall slope to the main drain at least 2" in 10 feet.
 - 2) Surge Pool. A surge storage area shall be provided which will contain the water used for pumping onto the slide during periods when the slide is not in use, except where the plunge pool is a swimming pool where the water elevation will not be lowered more than 1 inch when the flume pumps are in operation.
 - 3) Swimming Pools. Where a swimming pool is used as a plunge pool, the area where the slide exits shall be roped off from the area of the pool used for swimming and bathing. Distances to any roping shall comply with the clearances specified in Section 820.250(g)(2).
 - i) Water Treatment. Water from the swimming pool or plunge pool shall be treated and filtered in accordance with Section 820.210. Water shall meet the quality standards of Section 820.320. Where sliders exit into a licensed bathing beach or a bathing beach located in a licensed

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

recreational area or youth camp, the water shall meet the water quality standards of Section 820.400 56b.

j) Bathing Preparation Areas. A dressing area and toilet facilities shall be provided for each sex.

k) Supervision.

1) At least one attendant shall be on duty at all times when the slide is in operation in order to control the traffic of individuals using the slide. Attendants shall ensure that the slide is used in a safe and responsible manner. This attendant shall be qualified in both first-aid and life-saving techniques through Red Cross, YMCA, or equivalent training. One attendant at the plunge pool shall not be assigned other duties that would distract his attention from proper observation of persons in the pool area or that would prevent immediate assistance to persons in distress.

2) When a continuous line of 5 or more people is waiting to use the slide, one or more attendants shall be on duty at the top and bottom of the slide to assist users, control timing of each person on the slide and supervise all visible portions of the slide.

3) When the plunge pool is not visible from the top of the slide, a means of communication shall be provided between the attendants at the top and bottom.

l) Grates. The intake velocity for water pumped from any plunge pool to the slide shall not exceed 1 1/2 feet per second and the intake opening shall be protected by a grating. The maximum width of grating openings shall be 1/2 one-half inch.

m) During the operating season the operator shall:

1) Make a daily inspection of each flume and check for and eliminate any of the following conditions:

- A) loose railings
- B) leaking seals at butt joints
- C) rough patching at cracks or joints
- D) loose guards at turns
- E) unusual movement of flume bed when walked on
- F) growth of algae
- G) sharp edges and rough surfaces on flume and safety rails
- H) projection of any structure or plant growth near or into the flume.

2) Inspect areas weekly where chemicals are stored or dispensed checking for proper ventilation, lighting, cleanliness, proper labeling, and storage of chemicals.

3) Not use any mat which is not pliable and in good condition.

(Source: Amended 22 Ill. Reg. 0357, effective MAY 15 1998)

SUBPART E: BATHING BEACH DESIGN AND OPERATION

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Section 820.400 Minimum Sanitary Requirements for Bathing Beaches

a) Initial Sanitary Survey. Prior to the issuance of a construction permit, the Department shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical and bacteriological characteristics of the bathing beach area, as well as any potential or actual sources of contamination in the watershed which could affect the beach. The presence of any such sources of contamination shall constitute grounds to deny the permit.

1) Physical Quality. The following characteristics shall not be present in the beach area or watershed:

A) Sludge deposits, solid refuse, floating waste solids, oils, grease or scum.

B) Hazardous substances being discharged into bathing beach water or watershed.

2) Bacteriological Quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

A) At least two samples shall be collected from the proposed beach area and additional samples shall be collected from any tributaries as they enter the lake. Fecal coliform bacteria counts of 200 colonies/100 ml or an E. coli density of 126 colonies/100 ml in one or more samples shall require additional investigation, survey, special analysis and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results must be obtained before a construction permit will be issued.

B) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

3) Chemical Quality. There shall be no discharges of chemical substances capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

b) Design

1) Bathing Load. The bathing load shall be established at all beaches constructed after May 28, 1997 June-17-1996, by the registered engineer or architect who designed the project.

2) Beach and Swimming Areas. The wading areas at all beaches shall be separated from swimming and diving areas by lines securely anchored and buoyed. The slope of the bottom of any portion of the beach having a water depth of less than 5 feet shall not exceed 1 foot vertical for 12 feet horizontal. The slope shall be uniform. The bottom of the wading and swimming areas shall consist of sand or gravel. If disinfection or filtration is provided, it must comply with the requirements in Section 820.210.

3) Diving Facilities

A) Where diving facilities are provided, the following minimum

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

bathers present per day is 50 or fewer. Two toilets or privies must be provided when the number of bathers present per day is 51 to 100. An additional toilet or privy must be provided for each 100 additional bathers. The maximum number of toilets or privies required is ten. The required toilets or privies must be located for each sex within 300 feet of the shoreline.

- e) Bathing Beach Operation
- 1) Samples of bathing beach water shall be taken by the applicant or manager/operator and submitted to the Department at such times and points as designated by the Department within the area utilized for bathing or swimming purposes. Additional samples shall also be obtained at any critical point subject to possible pollution as determined by a sanitary survey.
 - 2) During operation, the following bacteriological water quality results shall warrant the actions described:
 - A) A fecal coliform count of 500 colonies/100 ml or an E. coli count of 235 colonies/100 ml in each of two samples collected on the same day shall require closing the beach. The beach shall not be reopened until two additional samples collected on the same day are both less than 500 fecal coliform/100 ml or 235 E. coli/100 ml.
 - B) A fecal coliform count of 500 colonies/100 ml or an E. coli count of 235 colonies/100 ml in any single sample of a two sample set shall require the submission of two additional samples to be collected on the same day within 24 hours after notification by the Department. If either of the two follow-up samples exceeds a fecal coliform count of 500 colonies/100 ml or an E. coli count of 235 colonies/100 ml, the beach shall be closed and not reopened until two additional samples collected on the same day are both less than 500 fecal coliform/100 ml or 235 E. coli/100 ml.
 - 3) If a sanitary survey determines that there are discharges of sanitary or combined sewers or of other raw or partially treated sewage to the beach or immediate watershed, the bathing beach shall be closed by written order of the Department.
 - 4) Where schistosoma dermatitis (swimmers' itch) is known to exist, appropriate measures shall be taken to protect the bathers. Such measures may include posting of warning signs, chemical treatment of the beach or closing the beach. Any chemical treatment shall comply with all federal, State and or local requirements, including prior approval of the Department or its agent(s).
 - 5) The beach manager/operator shall monitor the water depth around diving facilities and prohibit use of any such facilities which do not comply with the minimum water depth requirements of subsection (b)(3) of this Section Section-820-590(b)(3).
 - 6) For all beaches established after May 28, 1997 June-17-1996, the beach manager/operator shall enforce the bather load established in subsection Section---820-590(b)(1) of this Section.

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

water depth must be maintained for a distance of at least 12 feet beyond the end and sides of the platform or board:

Height of Platform or Board Above Water	Minimum Water Depth
0 - 1/2 Meter	9.5 feet
1 Meter	10 feet
3 Meters	12 feet

- B) Handrails, guardrails and steps shall comply with the requirements of Section 820.200(o)(1).
- 4) ~~where the water is less than 5 feet deep~~ where the water is less than 5 feet deep shall be separated from swimming and diving areas by a line ~~lines~~ lines securely anchored and buoyed at a water depth of 5 feet or less. The limits of the swimming area shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming, there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing such markers and stating that they indicate the limits of the swimming area.
- 5) Water Slides and Sliding Boards. Water slides shall comply with Section 820.250 and sliding boards shall comply with Section 820.200(p).
- c) Electrical Wiring. All electrical wiring shall be in accordance with the National Electrical Code in effect at the time of construction.
- d) Bathhouses/Toilets
- 1) Requirements for Beaches Established After May 28, 1997(New) For all new beaches established after May 28, 1997 June-17-1996, a bathhouse shall be provided within 300 feet of the shoreline unless the beach is intended to serve only a residential development located around the lake, and a maximum of 50 or fewer bathers are persons is anticipated to be present per day at any time. In such cases, at least one toilet or privy shall be provided for each sex within 300 feet of the shoreline. 2) Bathhouses shall be designed in accordance with the requirements of Section 820.220(b)(7) and (c)(7)(d)(7)-(f) and (f). The bather load to be used to determine the required numbers of fixtures shall be provided by the registered engineer or architect who designed the project.
 - 23) Requirements for Beaches Established Before May 28, 1997 (Existing) All existing beaches established before June-17-1996 shall comply with the bathhouse/toilet facility requirements in effect at the time they were constructed, but as a minimum shall provide at least one toilet or privy must be provided when the number of

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

Additionally, for all beaches the bather density in water less than 5 feet deep shall not exceed one bather per 25 square feet.
7) No swimming shall be permitted after sunset or when lightning is present.

8) No pets shall be permitted in the beach area.

9) Feeding of wildlife or other actions which encourage their presence is prohibited.

10) The beach area shall be kept free of any debris including wastes from waterfowl or other wildlife.

11) Leakproof, covered refuse containers shall be provided at convenient locations in the beach area. They shall be emptied when at least twice per week and more often if necessary to avoid odors and insect breeding.

f) Lifeguards. Lifeguards shall be provided at bathing beaches which allow bathers 16 years of age or under to enter the beach without a responsible person 17 years of age or older present, except when the parent or guardian of each person under 17 years of age submits written permission to the beach owner or manager/operator allowing such individuals under 17 years of age to enter the beach or swim without a lifeguard or responsible person 17 years of age or older present. Lifeguards shall comply with the requirements of Section 820.300(b).

g) Safety Requirements

1) A U.S. Coast Guard approved ring buoy with at least 25 feet of rope shall be available at the beach when bathers are present.

2) A first-aid kit containing the items described in Appendix-B shall be available at the beach.

3) A telephone shall be available within 500 feet of the beach when bathers are present. The numbers of the local police, fire department, rescue squad and ambulance, and/or 911 numbers shall be posted near the telephone. A portable phone may be used to meet this requirement. The phone may be located in a residence within 500 feet of the beach, provided it will be accessible at all times the beach is in operation. Unless located in the immediate beach area, a sign shall be posted indicating the location of the phone.

4) All drownings and injuries or illnesses requiring hospitalization shall be reported to the Department within 24 hours and the Department's "Drowning and Injury Report" form shall be completed and submitted within 7 days.

h) Waiver

1) A homeowner's association may apply to the Department for a waiver of the requirements of subsection (d)(2) of this Section by making a written request signed by an officer of the association. The request must contain the following information:

A) The requirements from which the homeowner's association seeks a waiver;

B) Certification that a majority of the members of the

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

homeowner's association or a majority of the board of directors representing the homeowner's association agreed to be exempt from the requirements requested. If the application for waiver is based on a decision of the board of directors rather than a majority vote of the members, the waiver request must also indicate that all members of the association were notified in writing of the decision to request a waiver and of the requirements from which the association is requesting a waiver. A copy of the notification to members shall be included with the waiver request.

C) Certification that the beach normally serves 50 or fewer bathers per day; and

D) Certification that the use of the beach is intended only for members of the homeowner's association and their guests.

2) Upon submission of the waiver application, a waiver shall be granted only if the following conditions are met:

A) All water samples were submitted during the current or previous year as required by subsection (e)(1) of this Section; and

B) The closure standards set forth in subsection (e)(2) of this Section were not exceeded during the current or previous year or, if the closure standards were exceeded, the Department or local health department determined that the cause of the unsatisfactory water quality was not an absence of toilet facilities at the beach.

3) A waiver granted by the Department shall be valid indefinitely, except as provided in subsections (h)(3)(A), (B), and (C) of this Section:

A) A waiver shall become invalid immediately if the beach is closed due to a violation of the standards set forth in subsection (e)(2) of this Section, unless the Department or local health department determines that the cause of the unsatisfactory water quality was not an absence of toilet facilities at the beach;

B) If the applicant or manager/operator fails to comply with a written order of the Department to submit water samples required by subsection (e)(1), the waiver shall become invalid the date the samples were specified to be submitted;

C) A waiver shall not apply on any day the homeowner's association anticipates that the number of bathers will exceed 50 (for example, holiday weekends, special events, or parties).

4) When a waiver becomes invalid, the required toilet facilities shall be provided before the beach is allowed to operate. If a waiver is invalidated due to the conditions described in subsection (h)(3)(A) or (B), a new waiver application must be filed with and approved by the Department.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- i) The following rules governing the use of the beach shall be displayed on placards provided by the Department at the entrance to bathhouses or other conspicuous locations and shall be enforced by the beach manager/operator.

REGULATIONS - BEACHES

The following rules govern the use of the beach and shall be enforced by the beach manager/operator.

- 1) The beach water is not suitable for drinking. Avoid swallowing beach water.
- 2) Admission to the beach may be refused to all persons having any contagious disease, infectious conditions such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, diarrhea, vomiting, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind may also be refused admittance. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the beach area.
- 3) Littering is prohibited. In addition, no food, drink, gum or tobacco is allowed in the water. Glass containers are prohibited throughout the beach area.
- 4) All infants shall wear tight fitting rubber or plastic pants.
- 5) No one should swim alone.
- 6) Persons under the age of 17 must be accompanied by a responsible person 17 years of age or older unless a lifeguard is present.
- 7) Personal conduct within the beach must be such that safety is not jeopardized.
- 8) Diving in shallow water is not permitted.
- 9) Caution shall be exercised in the use of diving facilities.

(Source: Renumbered from Section 820.500 and amended at 22 Ill. Reg.

820.500, effective MAY 15 1998)

Section 820.500 Minimum Sanitary Requirements for Bathing Beaches (Renumbered)

(Source: Section 820.500 renumbered to Section 820.400 at 22 Ill. Reg.

820.500, effective MAY 15 1998)

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System
- 2) Code Citation: 80 Ill. Adm. Code 1650
- 3) Section Numbers: 1650.356
Emergency Action: New
- 4) Specific statutory citation upon which the rule is based and authorized: 40 ILCS 5/16-152.1, 16-154
- 5) Effective date of the rule: May 14, 1998
- 6) If this emergency rule is to expire before the end of the 150-day period (other than by means of adopting the rule through the general rulemaking process), please specify the date: This rule will expire at the end of the 150-day period.
- 7) Date filed in agency's principal office: May 8, 1998
- 8) The reason for the emergency: Public Act 90-448, in part, amended Sections 16-152.1 and 16-154 of the Pension Code (40 ILCS 5/16-152.1, 16-154) to allow the "pick up" of optional contributions which are made through an irrevocable payroll deduction authorization, effective July 1, 1998. This rule implements the amendments in a manner consistent with the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986, as amended, and the most recent interpretations of that Section issued by the Internal Revenue Service. Section 414(h)(2) is the federal requirement for a pick up arrangement.
- 9) A Complete Description of the Subjects and Issues Involved: The addition of Section 1650.356 implements certain amendments made to Article 16 of the Pension Code (40 ILCS 5/16) by Public Act 90-448 with respect to the pick up of optional contributions in accordance with Section 414(h)(2) of the Internal Revenue Code of 1986, as amended.
- 10) Whether there are any proposed amendments pending on this Part other than those appearing in the same issue of the Register as the emergency rules? If so, please specify Section numbers, the proposed action and the Register citation to the Notice of Proposed Rules: Yes
Repeal of Section 1650.380 22 Ill. Reg. 7314
- 11) Statement of Statewide Policy Objectives, if applicable: Not Applicable
- 12) Name, address and telephone number of the person to whom information and questions regarding this emergency rule shall be directed:

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

Carl Mowery, General Counsel
Teachers' Retirement System
2815 West Washington, P. O. Box 19253
Springfield IL 62794-9253
(217) 753-0961

The full text of the Emergency Amendments begins on the next page:

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYERS
SUBTITLE D: RETIREMENT SYSTEMS
CHAPTER III: TEACHERS' RETIREMENT SYSTEM OF
THE STATE OF ILLINOIS

PART 1650

THE ADMINISTRATION AND OPERATION OF THE
TEACHERS' RETIREMENT SYSTEM

SUBPART A: REPORTS BY BOARD OF TRUSTEES

Section
1650.10 Annual Financial Report (Repealed)

SUBPART B: BASIC RECORDS AND ACCOUNTS

Section
1650.110 Membership Records
1650.120 Claims Records (Repealed)
1650.130 Individual Accounts (Repealed)
1650.140 Ledger and Accounts Books (Repealed)
1650.150 Statistics (Repealed)
1650.160 Confidentiality of Records
1650.180 Filing and Payment Requirements
1650.181 Early Retirement Incentive Payment Requirements
1650.182 Waiver of Additional Amounts Due
1650.183 Definition of Employer's Normal Cost

SUBPART C: FILING OF CLAIMS

Section
1650.210 Claim Applications
1650.220 Reclassification of Disability Claim (Repealed)
1650.230 Medical Examinations and Investigations of Claims
1650.240 Refunds; Impermissible Refunds; Canceled Service; Repayment
1650.250 Death Benefits
1650.260 Evidence of Age
1650.270 Reversionary Annuity - Evidence of Dependency
1650.271 Evidence of Parentage
1650.272 Eligible Child Dependent By Reason of a Physical or Mental
Disability
1650.280 Evidence of Marriage
1650.290 Offsets

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

Section
1650.310 Effective Date of Membership

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

1650.320 Method of Calculating Service Credits
 1650.325 Method of Calculating Service Credit for Recipients of a Disability Benefit or Occupational Disability Benefit
 1650.330 Duplicate Service Credit
 1650.340 Service Credit for Leaves of Absence
 1650.341 Service Credit for Involuntary Layoffs
 1650.345 Service Credit for Periods Away From Teaching Due to Pregnancy
 1650.346 Service Credit for Periods Away From Teaching Due to Adoption
 1650.350 Service Credit for Unused Accumulated Sick Leave Upon Retirement
 1650.355 Purchase of Optional Service - Required Minimum Payment
 1650.356 Payroll Deduction Program
EMERGENCY
 1650.360 Settlement Agreements and Judgments
 1650.370 Calculation of Average Salary (Renumbered)
 1650.380 Definition of Actuarial Equivalent
 1650.390 Independent Contractors

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section
 1650.410 Refunds for Duplicate or Noncreditable Service
 1650.420 Interest on Deficiencies (Repealed)
 1650.430 Installment Payments (Repealed)
 1650.440 Small Deficiencies, Credits or Death Benefit Payments
 1650.450 Definition of Salary
 1650.451 Reporting of Conditional Payments
 1650.460 Calculation of Average Salary
 1650.470 Rollover Distributions
 1650.480 Rollovers to the System

SUBPART F: RULES GOVERNING ANNUITANTS AND BENEFICIARIES

Section
 1650.505 Beneficiary (Repealed)
 1650.510 Re-entry Into Service
 1650.520 Suspension of Benefits
 1650.530 Power of Attorney
 1650.540 Conservators/Guardians
 1650.550 Presumption of Death
 1650.560 Benefits Payable on Death
 1650.570 Survivors' Benefits
 1650.575 Full-time Student - Receipt of Survivors Benefits Until Age 22
 1650.580 Evidence of Eligibility
 1650.590 Comptroller Offset
 1650.595 Overpayments

SUBPART G: ATTORNEY GENERALS' OPINION

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

Section
 1650.605 Policy of the Board Concerning Attorney Generals' Opinion (Repealed)
 SUBPART H: ADMINISTRATIVE REVIEW
 Section
 1650.610 Staff Responsibility
 1650.620 Right of Appeal
 1650.630 Form of Written Request
 1650.640 Prehearing Procedure
 1650.650 Hearing Procedure
 1650.660 Rules of Evidence

SUBPART I: AMENDMENTS TO BYLAWS AND RULES

Section
 1650.710 Amendments

SUBPART J: RULES OF ORDER

Section
 1650.810 Parliamentary Procedure

SUBPART K: FREEDOM OF INFORMATION ACT REQUESTS

Section
 1650.910 Summary and Purpose
 1650.920 Definitions
 1650.930 Submission of Requests
 1650.940 Form and Content of FOIA Requests
 1650.950 Appeal of a Denial
 1650.960 Executive Director's Response to Appeal
 1650.970 Response to FOIA Requests
 1650.980 Inspection of Records at System Office
 1650.990 Copies of Public Records
 1650.995 Materials Available Under Section 4 of FOIA

SUBPART L: BOARD ELECTION PROCEDURES

Section
 1650.1000 Nomination of Candidates
 1650.1010 Petitions
 1650.1020 Eligible Voters
 1650.1030 Election Materials
 1650.1040 Marking of Ballots
 1650.1050 Return of Ballots
 1650.1060 Observation of Ballot Counting
 1650.1070 Certification of Ballot Counting

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

1650.1080 Challenges to Ballot Counting

SUBPART M: RETIREMENT BENEFITS

Section
1650.2900 Excess Benefit Arrangement

AUTHORITY: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code (26 U.S.C. 1 et seq.); Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

SOURCE: Filed June 20, 1958; emergency rules adopted at 2 Ill. Reg. 49, p. 249, effective November 29, 1978, for a maximum of 150 days; adopted at 3 Ill. Reg. 9, p. 1, effective March 3, 1979; codified at 8 Ill. Reg. 16350; amended at 9 Ill. Reg. 20885, effective December 17, 1985; amended at 12 Ill. Reg. 16896, effective October 3, 1988; amended at 14 Ill. Reg. 18305, effective October 29, 1990; amended at 15 Ill. Reg. 16731, effective November 5, 1991; amended at 17 Ill. Reg. 1631, effective January 22, 1993; amended at 18 Ill. Reg. 6349, effective April 15, 1994; emergency amendment at 18 Ill. Reg. 8949, effective May 24, 1994, for a maximum of 150 days; emergency modified at 18 Ill. Reg. 12880; amended at 18 Ill. Reg. 15154, effective September 27, 1994; amended at 20 Ill. Reg. 3118, effective February 5, 1996; emergency amendment at 21 Ill. Reg. 483, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 2422, effective January 31, 1997; amended at 21 Ill. Reg. 4844, effective March 27, 1997; emergency amendment at 21 Ill. Reg. 17159, effective December 9, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 7243, effective April 9, 1998; emergency amendment at 22 Ill. Reg. 7314, effective April 9, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 8074, effective May 14, 1998, for a maximum of 150 days.

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

Section 1650.356 Payroll Deduction Program**EMERGENCY**

- a) Effective July 1, 1998, a member who is employed on a full-time basis [4 or more clock hours per day, five days per week] may have his or her employer pick up optional contributions that the member has elected to pay the System through the payroll deduction program, and the contributions so picked up shall be treated as employer contributions for the purposes of determining federal income tax treatment [40 ILCS 5/16-152.1(d)].
- b) Prior to the member's election to have his or her employer pick up the member's optional contributions, the member shall first establish the member's eligibility to purchase optional service credit pursuant to Section 16-127 of the Pension Code [40 ILCS 5/16-127] or to repay a refund pursuant to Section 16-151 of the Pension Code [40 ILCS

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

5/16-151.

- c) After establishing an optional contribution balance and electing to have optional contributions picked up on a before-tax basis, the member shall contact the System prior to the anticipated enrollment date and request that an irrevocable payroll deduction authorization be prepared and sent to the member.
- d) To participate in the payroll deduction program, the member shall execute a binding, irrevocable payroll deduction authorization that is furnished to the member by the System [40 ILCS 5/16-152.1(d)].
 - 1) In the agreement, the member shall confirm that he or she is employed by the employer on a full-time basis (4 or more clock hours per day, five days per week).
 - 2) The amount of the optional contribution balance as of the enrollment date and the type(s) of optional service shall be indicated on the authorization form.
 - 3) The amount to be deducted on a monthly basis shall be clearly indicated on the authorization form. The monthly deduction shall remain constant except for the final payment, which may be less than the stated amount. The minimum monthly deduction must equal the lesser of the amount owed or fifty dollars.
 - 4) The rate of interest shall equal the regular interest rate established in Section 16-112 of the Pension Code [40 ILCS 5/16-112] in effect on the enrollment date.
 - 5) The enrollment date shall be determined as follows:
 - A) If the deductions will occur on a periodic basis for more than one month, the enrollment date shall be the first day of the calendar quarter after the execution of the payroll deduction authorization by the member and on behalf of the employer.
 - B) If the deductions will occur during only one calendar month, the enrollment date shall be the first day of the calendar month in which the deduction will be made after the execution of the payroll deduction authorization by the member and on behalf of the employer.
 - 6) The execution and acceptance of the payroll deduction authorization must occur prior to the enrollment date.
 - 7) The payroll deduction authorization shall be irrevocable upon the first day of the pay period in which the first deduction will be made. An irrevocable payroll deduction authorization may only be terminated in accordance with subsection (h) below.
 - 8) A member, who has a valid, irrevocable payroll deduction authorization in effect, shall be prohibited from making after-tax contributions or authorizing rollovers for the purpose of reducing his or her optional contribution balance.
 - 9) A member may have a separate agreement for each type of optional service.
 - A) An agreement may cover more than one type of optional service.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

- B) A member shall have only one agreement with an employer for each type of optional service, unless additional optional service is based upon employment or other qualifying event occurring after the enrollment period for the previous authorization for the same type of optional service.
- 10) The authorization form may not be altered in any way or manner. Altered forms are void.
- e) The member shall forward the executed payroll deduction authorization to the member's employer.
- f) A duly-authorized representative of the employer shall execute the payroll deduction authorization on behalf of the employer prior to its enrollment date.
- 1) Prior to acceptance, the duly-authorized representative of the employer shall determine that:
- A) the member is employed by the employer on a full-time basis (4 or more clock hours per day, five days per week); and
- B) the irrevocable payroll deduction authorization does not contain any handwriting other than the signature of the member and the date upon which the member executed the authorization; and
- C) the date on which the authorization is presented to the employer is prior to the enrollment date stated in the authorization.
- 2) Upon accepting the payroll deduction authorization, the duly-authorized representative of the employer shall:
- A) retain the upper portion of the authorization for its records; and
- B) sign the lower portion of the authorization and remit it to the Teachers' Retirement System at the address shown thereon prior to the first remittance.
- 3) The member's employer shall pick up the contributions from the same source of funds that is used to pay earnings to the member.
- 4) Prior to or on the 15th day of the month following the month in which the deduction is made, the employer shall:
- A) remit to the System the payroll deduction by:
- i) check, cashier's check, or money order, along with an approved TRS remittance advice form; or
- ii) by electronic fund transfer; and
- B) send the System a mechanically-produced paper report that includes:
- i) each participating member's name, social security number, and the amount remitted on behalf of each member; and
- ii) the name and social security number of each member who was scheduled to have an amount remitted but who had a qualifying event that terminated the agreement or who had an event that suspended the agreement and the reason or reasons for such termination or suspension.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

- 5) The employer shall withhold the amount stated in the irrevocable payroll deduction authorization until the balance for which the authorization was made is paid in full or until such time that a qualifying event occurs that terminates the authorization for a particular member. Prior to the month in which the last payment will be made, the System shall inform the employer and the member of the amount of the last payments as well as the month in which the last payment is to be made.
- 6) The employer shall not remit any optional contributions on behalf of a member directly to the System without such contributions having been made through this payroll deduction program.
- 9) A payroll deduction authorization shall be suspended (rather than terminated) if the member is not receiving a salary from the employer with whom the member made the authorization agreement for a period of time not to exceed one year and is promised renewed employment at the end of the period or has the right of re-employment pursuant to Section 24-12 of the School Code [105 ILCS 5/24-12]. At the end of the suspension period:
- 1) if the member is not re-employed within one year after the beginning of the suspense period, the authorization shall be terminated in accordance with subsection (h) below; or
- 2) if the member is re-employed, the employer shall deduct the amount stated in the agreement until the balance is paid in full or a qualifying event occurs that would terminate the authorization.
- h) A payroll deduction authorization terminates:
- 1) upon the payment in full of the balance (including interest) for which the authorization was made; or
- 2) after the occurrence of a qualifying event.
- A) The term "qualifying event" is defined as:
- i) the death of the member; or
- ii) the disability of the member; or
- iii) the retirement of the member; or
- iv) the termination of the member's employment status.
- B) The phrase "disability of the member" is defined as the cessation of salary from the employer due to the inability of the member to perform the duties of his or her position for an expected period of one year or more.
- C) The phrase "termination of the member's employment status" is defined as:
- i) the change of the member's full-time employment status to a substitute status or a part-time status, but does not include the change from a full-time covered position to a full-time non-covered position with the same employer; or
- ii) the resignation or other termination of employment with the employer; or
- iii) a suspension period that is greater than one year.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENTS

- 3) Upon termination of the payroll deduction authorization prior to the balance being paid in full:
- A) the member may pay the remainder in full by an after-tax lump sum payment, a rollover, or by executing a new payroll deduction authorization form with another employer; or
 - B) if the member does not pay the remainder in full prior to retirement and:
 - i) if the payment was for optional service credit, the portion of the optional service credit paid shall be credited to the member's account; or
 - ii) if the payment was for a repayment of a refund, the amount contributed shall be refunded to the member.
- i) For purposes of this Section:
- 1) The term "employer" shall mean the State of Illinois and any employer that is required or allowed to participate in the retirement program administered by the System.
 - 2) The phrase "type of optional service" shall mean:
 - A) the following types of optional service credit described in Section 16-127 of the Pension Code [40 ILCS 5/16-127]: prior service as a teacher, out-of-system service, military service, General Assembly service, leaves of absences (including pre-1983 pregnancy and adoption leaves), substitute teaching, and part-time teaching; and
 - B) the repayment of a refund pursuant to Section 16-151 of the Pension Code [40 ILCS 5/16-151].

(Source: Added by emergency amendment at 22 Ill. Reg. 0374, effective May 14, 1998, for a maximum of 150 days)

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

- 1) Heading of the Part: Meat and Poultry Inspection Act
- 2) Code Citation: 8 Ill. Adm. Code 125
- 3) Section Numbers: Peremptory Action:
125.380 Amended
- 4) Reference to the Specific State or Federal Court Order, Federal Rule or Statute which requires this Peremptory Rulemaking: The Meat and Poultry Inspection Act [225 ILCS 650]; the Federal Poultry Products Inspection Act (21 U.S.C.A. 454); and 63 FR 11359.
- 5) Statutory Authority: The Meat and Poultry Inspection Act [225 ILCS 650].
- 6) Effective Date: May 15, 1998
- 7) A Complete Description of the Subjects and Issues Involved:
In order to maintain an "equal to" status with the federal poultry products inspection program as required by the federal Poultry Products Inspection Act and in accordance with Section 16 of the Meat and Poultry Inspection Act, the Department is adopting amendments to the federal poultry products inspection rules.
The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations by "adding a provision to permit manufacturers of poultry products to interchange the amounts and kinds of poultry, within specified limits, in a product without requiring that each such formulation change have a separate label." The specific federal regulation being amended is 9 CFR 381.118. The amendment appears at 63 FR 11359 (effective May 8, 1998).
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Date Filed in Agency's Principal Office: May 14, 1998
- 10) Is this rule in compliance with Section 5.03 of the Illinois Administrative Procedure Act? Yes
- 11) Are there any proposed amendments pending to this Part? No
- 12) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local governments.

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

- 13) Information and questions regarding this adopted amendment shall be directed to:

Debbie Wakefield
 Illinois Department of Agriculture
 State Fairgrounds, P.O. Box 19281
 Springfield, Illinois 62794-9281
 217/785-5713
 Facsimile: 217/785-4505

The full text of the Peremptory Amendment begins on the next page:

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

- TITLE 8: AGRICULTURE AND ANIMALS
 CHAPTER I: DEPARTMENT OF AGRICULTURE
 SUBCHAPTER C: MEAT AND POULTRY INSPECTION ACT

PART 125

MEAT AND POULTRY INSPECTION ACT

- SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR
 POULTRY INSPECTION

Section
 125.10
 125.11
 125.12
 125.13
 125.14
 125.15
 125.16
 125.17
 125.18
 125.19
 125.20
 125.21
 125.22
 125.23
 125.24
 125.25
 125.26
 125.27
 125.28

Definitions
 Incorporation by Reference of Federal Rules
 Application for License; Approval
 Official Number
 Inspections; Suspension or Revocation of License
 Administrative Hearings; Appeals (Repealed)
 Assignment and Authority of Program Employees
 Schedule of Operations; Overtime
 Official Marks of Inspection, Devices and Certificates
 Records and Reports
 Exemptions
 Disposal of Dead Animals and Poultry
 Reportable Animal and Poultry Diseases
 Detention; Seizure; Condemnation
 Sanitation Standard Operating Procedures (SOP's)
 Hazard Analysis and Critical Control Point (HACCP) Systems
 Imported Products

SUBPART B: MEAT INSPECTION

Section
 125.150
 125.160
 125.170
 125.180
 125.190
 125.200
 125.210
 125.220
 125.230
 125.240
 125.250
 125.260
 125.270
 125.280

Livestock and Meat Products Entering Official Establishments
 Equine and Equine Products
 Facilities for Inspection
 Sanitation
 Ante-Mortem Inspection
 Post-Mortem Inspection
 Disposal of Diseased or Otherwise Adulterated Carcasses and Parts
 Humane Slaughter of Animals
 Handling and Disposal of Condemned or Other Inedible Products at
 Official Establishment
 Rendering or Other Disposal of Carcasses and Parts Passed for Cooking
 Marking Products and Their Containers
 Labeling, Marking and Containers
 Entry into Official Establishment; Reinspection and Preparation of
 Product
 Meat Definitions and Standards of Identity or Composition

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

- 125.290 Transportation
 125.295 Imported Products (Repealed)
 125.300 Special Services Relating to Meat and Other Products
 125.305 Exotic Animal Inspection
- SUBPART C: POULTRY INSPECTION
- Section
 125.310 Application of Inspection
 125.320 Facilities for Inspection
 125.330 Sanitation
 125.340 Operating Procedures
 125.350 Ante-Mortem Inspection
 125.360 Post-Mortem Inspection; Disposition of Carcasses and Parts
 125.370 Handling and Disposal of Condemned or Inedible Products at Official Establishments
 125.380 Labeling and Containers
 125.390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements
 125.400 Definitions and Standards of Identity or Composition
 125.410 Transportation; Sale of Poultry or Poultry Products

AUTHORITY: Implementing and authorized by the Meat and Poultry Inspection Act [225 ILCS 650] and Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16].

SOURCE: Adopted at 9 Ill. Reg. 1782, effective January 24, 1985; peremptory amendment at 9 Ill. Reg. 2337, effective January 28, 1985; peremptory amendment at 9 Ill. Reg. 2980, effective February 20, 1985; peremptory amendment at 9 Ill. Reg. 4856, effective April 1, 1985; peremptory amendment at 9 Ill. Reg. 9240, effective June 5, 1985; peremptory amendment at 9 Ill. Reg. 10102, effective June 13, 1985; peremptory amendment at 9 Ill. Reg. 11673, effective July 17, 1985; peremptory amendment at 9 Ill. Reg. 13748, effective August 23, 1985; peremptory amendment at 9 Ill. Reg. 15575, effective October 2, 1985; peremptory amendment at 9 Ill. Reg. 19759, effective December 5, 1985; peremptory amendment at 10 Ill. Reg. 447, effective December 23, 1985; peremptory amendment at 10 Ill. Reg. 1307, effective January 7, 1986; peremptory amendment at 10 Ill. Reg. 3318, effective January 24, 1986; peremptory amendment at 10 Ill. Reg. 3880, effective February 7, 1986; peremptory amendment at 10 Ill. Reg. 11478, effective June 25, 1986; peremptory amendment at 10 Ill. Reg. 14858, effective August 22, 1986; peremptory amendment at 10 Ill. Reg. 15305, effective September 10, 1986; peremptory amendment at 10 Ill. Reg. 16743, effective September 19, 1986; peremptory amendment at 10 Ill. Reg. 18203, effective October 15, 1986; peremptory amendment at 10 Ill. Reg. 19818, effective November 12, 1986; peremptory amendment at 11 Ill. Reg. 1696, effective January 5, 1987; peremptory amendment at 11 Ill. Reg. 2930, effective January 23, 1987; peremptory amendment at 11 Ill. Reg. 9645, effective April 29, 1987; peremptory amendment at 11 Ill. Reg.

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

10321, effective May 15, 1987; peremptory amendment at 11 Ill. Reg. 11184, effective June 5, 1987; peremptory amendment at 11 Ill. Reg. 14830, effective August 25, 1987; peremptory amendment at 11 Ill. Reg. 18799, effective November 3, 1987; peremptory amendment at 11 Ill. Reg. 19805, effective November 19, 1987; peremptory amendment at 12 Ill. Reg. 2154, effective January 6, 1988; amended at 12 Ill. Reg. 3417, effective January 22, 1988; peremptory amendment at 12 Ill. Reg. 4879, effective February 25, 1988; peremptory amendment at 12 Ill. Reg. 6313, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 6819, effective March 29, 1988; peremptory amendment at 12 Ill. Reg. 13621, effective August 8, 1988; peremptory amendment at 12 Ill. Reg. 19116, effective November 1, 1988; peremptory amendment at 12 Ill. Reg. 20894, effective December 21, 1988; peremptory amendment at 13 Ill. Reg. 228, effective January 11, 1989; peremptory amendment at 13 Ill. Reg. 2160, effective February 13, 1989; peremptory amendment at 13 Ill. Reg. 3696, effective March 13, 1989; peremptory amendment at 13 Ill. Reg. 15853, effective October 5, 1989; peremptory amendment at 13 Ill. Reg. 16838, effective October 11, 1989; peremptory amendment at 13 Ill. Reg. 17495, effective January 18, 1990; amended at 14 Ill. Reg. 3424, effective February 26, 1990; peremptory amendment at 14 Ill. Reg. 4953, effective March 23, 1990; peremptory amendment at 14 Ill. Reg. 11401, effective July 6, 1990; peremptory amendment at 14 Ill. Reg. 13355, effective August 20, 1990; peremptory amendment at 14 Ill. Reg. 16064, effective September 24, 1990; peremptory amendment at 14 Ill. Reg. 21060, effective May 29, 1991; peremptory amendment at 15 Ill. Reg. 620, effective January 2, 1991; peremptory amendment withdrawn at 15 Ill. Reg. 1574, effective January 2, 1991; peremptory amendment at 15 Ill. Reg. 3117, effective September 3, 1991; peremptory amendment at 15 Ill. Reg. 8714, effective May 29, 1991; amended at 15 Ill. Reg. 8801, effective June 7, 1991; peremptory amendment at 15 Ill. Reg. 13976, effective September 20, 1991; peremptory amendment at 16 Ill. Reg. 1899, effective March 2, 1992; amended at 16 Ill. Reg. 8349, effective May 26, 1992; peremptory amendment at 16 Ill. Reg. 11687, effective July 10, 1992; peremptory amendment at 16 Ill. Reg. 11963, effective July 22, 1992; peremptory amendment at 16 Ill. Reg. 12234, effective July 24, 1992; peremptory amendment at 16 Ill. Reg. 16337, effective October 19, 1992; peremptory amendment at 16 Ill. Reg. 17165, effective October 21, 1992; peremptory amendment at 17 Ill. Reg. 2063, effective February 12, 1993; peremptory amendment at 17 Ill. Reg. 15725, effective September 7, 1993; peremptory amendment at 17 Ill. Reg. 16238, effective September 8, 1993; peremptory amendment at 17 Ill. Reg. 18215, effective October 5, 1993; peremptory amendment at 18 Ill. Reg. 304, effective December 23, 1993; peremptory amendment at 18 Ill. Reg. 2164, effective January 24, 1994; amended at 18 Ill. Reg. 4622, effective March 14, 1994; peremptory amendment at 18 Ill. Reg. 6442, effective April 18, 1994; peremptory amendment at 18 Ill. Reg. 8493, effective May 27, 1994; amended at 18 Ill. Reg. 11489, effective July 7, 1994; peremptory amendment at 18 Ill. Reg. 12546, effective September 7, 1994; amended at 18 Ill. Reg. 14924, effective September 26, 1994; peremptory amendment at 18 Ill. Reg. 15452, effective September 27, 1994; peremptory amendment at 19 Ill. Reg. 1342, effective January 27, 1995; peremptory amendment at 19 Ill. Reg. 4765, effective March 13, 1995; peremptory

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

amendment at 19 Ill. Reg. 7067, effective May 8, 1995; peremptory amendment at 19 Ill. Reg. 14896, effective October 6, 1995; peremptory amendment at 19 Ill. Reg. 15766, effective November 10, 1995; peremptory amendment at 19 Ill. Reg. 16866, effective December 22, 1995; peremptory amendment at 20 Ill. Reg. 5091, effective March 19, 1996; peremptory amendment at 20 Ill. Reg. 10403, effective July 17, 1996; amended at 20 Ill. Reg. 11928, effective September 1, 1996; peremptory amendment at 20 Ill. Reg. 12634, effective September 5, 1996; peremptory amendment at 20 Ill. Reg. 15371, effective November 13, 1996; peremptory amendment at 21 Ill. Reg. 1221, effective January 14, 1997; peremptory amendment at 21 Ill. Reg. 1719, effective January 28, 1997; peremptory amendment at 21 Ill. Reg. 6609, effective May 20, 1997; amended at 21 Ill. Reg. 11494, effective August 1, 1997; peremptory amendment at 21 Ill. Reg. 11798, effective August 8, 1997; peremptory amendment at 21 Ill. Reg. 12686, effective August 28, 1997; peremptory amendment at 21 Ill. Reg. 14575, effective October 22, 1997; peremptory amendment at 21 Ill. Reg. 3602, effective February 2, 1998; peremptory amendment at 22 Ill. Reg. 5740, effective March 5, 1998; peremptory amendment at 22 Ill. Reg. 3384, effective May 15, 1998.

SUBPART C: POULTRY INSPECTION

Section 125.380 Labeling and Containers

- a) The Department incorporates by reference 381.115 through 381.127, 381.129 through 381.132(f), 381.134 through 381.140, 381.144(a) through 381.144(d), 381.400, 381.402, 381.408, 381.409, 381.412, 381.413, 381.443, 381.444, 381.445, 381.454, 381.456, 381.460, 381.461, 381.462, 381.463, 381.469, 381.480, 381.500 (1997; 62 FR 45016, effective September 24, 1997; 63 FR 7279, effective February 13, 1998; 63 FR 11359, effective May 8, 1998).
- b) Each shipping container and each immediate container containing inspected and passed poultry and/or poultry products shall be identified in accordance with the labeling provisions of this Section.
- c) Immediate containers of poultry products packed in, bearing or containing any chemical additive shall bear a label naming the additive and the purpose of its use.
- d) Labels for consumer packages shall be approved if the label is not misbranded in accordance with Section 2.20 of the Act and is in compliance with this Section.
- e) The specific statements listed in 9 CFR 381.121 may be added to the label for the shipping container at the option of the licensee.
- f) The quantity of contents as shown on the label shall be in compliance with the Weights and Measures Act and the rules adopted thereto (8 Ill. Adm. Code 600).
- g) No labeling or containers that have not been approved shall be used until a final decision is rendered at an administrative hearing in accordance with Section 19 of the Act.
- h) The Department shall approve the manufacture of a device or label

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

- containing an official mark of inspection provided the device or label is in compliance with Section 125.90.
- i) Labeling and sketch labeling shall be approved by the Department if the label is in compliance with the provisions of this Section and the label is not misbranded in accordance with Section 2.20 of the Act. All labels and sketch labels shall be submitted to the Springfield office of the Department for approval.
 - j) The Department shall approve temporary labeling as stated in 9 CFR 381.132(f). Labeling which has received temporary approval shall not be used beyond the temporary approval period unless the printer or manufacturer of the label is unable to provide the official establishment with the permanent labels before the expiration of the temporary approval.
 - k) A copy of each label submitted for approval shall be accompanied by a statement showing the common or usual names, the kinds and percentages of the ingredients comprising the poultry product and a statement indicating the method or preparation of the product with respect to which the label is to be used. Laboratories used for chemical analysis shall be any approved laboratory as defined in 8 Ill. Adm. Code 20.1.
 - l) The Department does not approve terms for generic labeling and considers the approval of terms as generic to be the responsibility of the federal government.
 - m) The Department does not issue a list of approved packaging materials and will permit for use any packaging material which has been approved by the U.S. Department of Agriculture (see 9 CFR 317.24 (1997)).
 - n) Labels and devices approved for use pursuant to Section 125.90 and this Section shall be disposed of only when such labels or devices have been mutilated or damaged or when the establishment ceases to do business. Such labels and devices shall be given to the inspector for disposition.
 - o) The inspector shall grant authorization to transport labels, wrappers and containers bearing official marks from one official establishment to another official establishment provided the official establishment provides to the inspector the information required in 9 CFR 381.138 so that the inspector can notify the inspector at the destination point. Labels to be used for the relabeling of inspected and passed product shall be permitted to leave the official establishment when the product must be relabeled because the original labels have become mutilated or damaged. The official establishment shall reimburse the Department for any overtime costs, if applicable, involved for the inspector to supervise the relabeling of a product. The overtime charges shall be as set forth in Section 125.80.
 - q) Labeling of custom slaughtered and/or custom processed poultry and/or poultry products and the containers containing custom slaughtered and/or custom processed poultry products shall be as set forth in Section 5 of the Act.
 - r) The Department shall approve only those abbreviations for marks of

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

inspection as specifically stated in Section 2.26(j)(3), (4), (5) and (9) of the Act.

(Source: Peremptory amendment at 22 Ill. Reg. 9384, effective May 15, 1998)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

1. Statute requiring agency to publish information concerning Private Letter Rulings in the *Illinois Register*:

Name of Act: Illinois Department of Revenue Sunshine Act
Citation: 20 ILCS 2515/1 et seq.

2. Summary of information:

Index of Department of Revenue income tax Private Letter Rulings and General Information Letters issued for the First Quarter of 1997. Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. (See 86 Ill. Adm. Code 1200.110) General information letters are issued by the Department in response to written inquiries from taxpayers, taxpayer representative, business, trade, industrial associations or similar groups. General information letters contain general discussion of tax principles or applications. General information letters are designed to provide general background information on topics of interest to taxpayers. General information letters do not constitute statements of agency policy that apply, interpret, or prescribe tax laws administered by the Department. *General information letter may not be relied upon by taxpayers in taking position with reference to tax issued and create no rights for tax payers under the taxpayers Bill of Rights Act.* (See 86 Ill. Adm. Code 1200.120)

The letters are listed numerically, are identified as either a General Information Letter or a Private Letter Ruling and are summarized with a brief synopsis under the following subjects:

Addition Modifications	Property Factor
Bond Premium Amortization	Sales Factor
Dividends	Transportation Services
Interest	Other Rulings
Net Operating Loss	(Not Included Above)
Zero Coupon Bonds	Assessment
Other Rulings	Bankruptcy
(Not included Above)	Base Income
Administrative Review	(Also See Additional Modifications
Allocation	Fringe Benefits, Subtraction Modifi
(For Alternative Apportionment	cations)
Rulings, See that heading)	Books and Records
Alternative Apportionment	Bulk Sales: See Sales Outside the
Amnesty	Ordinary Course of Business (Bulk
Apportionment	Sales)
Financial Organizations	Business Income
Insurance Companies	Capital Gains (Losses)

DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

NOTICE OF PUBLIC INFORMATION

Payroll Factor
(Also See Subtraction Modifications)
-Valuation Limitations)
Check Off Funds
Circuit Breaker
Claims for Refund: See Refunds
Collection
Combined Unitary Return
(Also See Unitary)
Commercial Domicile
Compensations
Composite Returns
Confidentiality
Credits
Coal Research and Utilization
Credit for Replacement Tax
Paid
Credit for Residential Real
Property Taxes
Enterprise Zone Investment
Foreign Tax
High Impact Business
Investment
Jobs Tax
Replacement Tax Investment
Research and Development
Training Expense
Other Rulings
(Not Included Above)
Deficiencies
Definitions
Domestic International Sales
Corporations (DISCs)
Elections: See Combined
Unitary Return, Extensions, Unitary
Enterprise Zones
(Also See Credits, Subtraction Modi-
fications)
Erroneous Refund: See Refunds
Estates
Estimated Tax
Exempt Organizations
Exemptions
Extensions
Failure to File: See Penalties
Failure to Pay: See Penalties
(Also See Base Income, Capital
Gains (Losses), Combined Unitary

Farmers: See Estimated Tax
Federal Returns
Fiduciaries
Financial Organizations: See
Apportionment
Foreclosure
Foreign Sales Corporations
(FSC's)
Foreign Tax: See Credits
Foreign Trade Zones: See
Subtraction Modifications,
Credits---Jobs Tax
Forms
Fraud: See Penalties
Fringe Benefits
IRC 125 "Cafeteria" Plans
IRC 401(k) Plans
Other Rulings (Not Included Above)
Gain (Loss): See Capital Gains
Losses: Valuation Limitation
Information Reports
Insurance Companies: See Apportionme
Interest Income
(Also see Additional Modifications
Subtraction Modifications)
Interest on Refunds and Deficiencies
IRC 338
Jeopardy: See Assessment
Judicial Review
Liens
Limited Liability Companies
Lottery
Military
(Also See Subtraction Modification
Miscellaneous
Modification Addition: See Addition
Modifications
Modification Subtraction: See Sub-
traction Modifications
Mutual Funds: See Subtraction Modi-
fications
Net Income (Loss) and Net Loss
Deduction (IITA 207)
Other Rulings
(Not Included Above)
Regulated Investment Companies
Replacement Tax

Returns, Net Operating Loss and Net
Operating Loss Deduction
Net Operating Loss and Net Operating
Loss Deduction
Nexus: See Public Law 86-272/Nexus
Nonbusiness income
Nonresidents: See
Residency/Nonresidency
Notice and Demand: See Notices
Notices
Nuclear Decommissioning
Trust
Overpayments: See Refunds
Partnerships
Payments:
Payroll Factor: See Apportionment
Penalties
Failure to File (IITA 1001)
Failure to File Withholding
Returns (IITA 1004)
Failure to Pay (IITA 1002)
Failure to Pay Estimated Tax
(IITA 804)
Fraud (IITA 1002)
Reasonable Cause (IITA 1001)
Underpayment of Tax (IITA 1005)
Other Rulings
(Not Included Above)
Pensions
(Also See Subtraction Modifications)
Political Organizations
Professional Athletes
Property Factor: See Apportionment
Property Tax: See Subtraction Modi-
fications
Protest
Public Law 86-272/Nexus
Rate of Tax
Real Estate Investment Trust
Reasonable Cause: See Penalties
Refunds (Also See Subtraction Modi-
fications)
Statute of Limitations
Qualified Pension Plans
Real Estate Taxes
Subpart F Income
Transportation Services
Valuation Limitation
Returns
(For Combined Unitary Return and
Composite Return Rulings, See Thos
Headings)
Amended Returns
Due Dates
Requirements to File
Short Period Returns
Other Rulings
(Not Included Above)
S Corporations
Sales Factor: See Apportionment
Sales Outside the Ordinary Course of
Business (Bulk Sales)
Seizure
Separate Accounting: See Alternative
Apportionment
Signature
Specific Accounting
Statute of Limitations: See Assess-
ment, Collection, Deficiencies
Refunds
Subchapter "S" Corporations: See S
Corporations
Subpart F Income: See Subtraction
Modifications
Subtraction Modifications
Bond Premium Amortization
Enterprise and Foreign Trade
Zones
Illinois Tax Refund
Interest on U.S. Government Obli-
gations
Military
Money Market Mutual Funds
Unitary
(Also See Combined Unitary Return)
U.S. Government Obligations: See
Subtraction Modifications
Valuation Limitations: See Subtracti
Modifications
Voluntary Disclosure Agreements

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

Other Rulings (Not Included Above)
 Taxability in Other States
 Taxable Year
 Transferees
 (Also See Sales Outside the Ordinary Course of Business (Bulk Sales))
 Transportation Services: See Apportionment
 Trusts
 Uniform Penalty and Interest Act
 Waiver on Assessment: See Assessment
 Withholding
 Employee Benefits
 Exemptions
 Personal Service Contracts (IITA 1405.2)
 Reciprocal Agreements
 Other Rulings
 (Not Included Above)

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of \$1.00 per opinion plus 50 cents per page for each page over one. Copies of the ruling letters may be downloaded free of charge from the Department's World Web site at www.revenue.state.il.us.

The indexes of Income Tax letter rulings for 1990, 1991, 1992, 1993, 1994, 1995, and 1996 are available for \$3.00. A cumulative Income Tax Sunshine Index of 1981 through 1989 letter ruling may be purchased for \$4.00.

3. Name and address of person to contact concerning this information

Margaret Forth
 Legal Services Office
 101 West Jefferson Street
 Springfield, Illinois 62794
 Telephone: (217) 782-6996

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

1998 FIRST QUARTER SUNSHINE INDEX

ADDITION MODIFICATIONS - INTEREST

IT 98-0025-GIL 03/09/1998 General Information Letter:
 Computation of addition modification for life insurance companies subject to Section 832 haircut.

COLLECTION

IT 98-0007-GIL 01/13/1998 General Information Letter:
 Response to questions re validity of levy.

COMBINED UNITARY RETURN

IT 98-0020-GIL 02/20/1998 General Information Letter:
 Adjustments to tax basis in stock of unitary subsidiary.

COMPENSATION

IT 98-0002-GIL 01/07/1998 General Information Letter:
 Response to questions regarding Indiana residents working in both Illinois and Indiana for single employer after reciprocal agreement termination.

IT 98-0010-GIL 01/26/1998 General Information Letter:
 Response to questions regarding income taxation and withholding requirements for compensation paid to players, managers, and other employees of professional sports teams and to musicians and other entertainers.

IT 98-0026-GIL 03/16/1998 General Information Letter:
 Taxation of nonresident transportation worker.

COMPOSITE RETURNS

IT 98-0001-GIL 01/05/1998 General Information Letter:
 Response to request to file composite return (not allowed for tiers of entities).

IT 98-0002-PLR 01/13/1998 Private Letter Ruling: Request for

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

permission to file composite returns.

IT 98-0003-PLR 02/03/1998 Private Letter Ruling: Petition for permission to file composite returns.

IT 98-0005-GIL 01/08/1998 General Information Letter: Response to questions re Subchapter S corporation filing of composite returns.

IT 98-0011-GIL 01/26/1998 General Information Letter: Response to request to file composite returns on behalf of partnership, its Subchapter S corporation partners and their shareholders.

DEFINITIONS

IT 98-0019-GIL 02/20/1998 General Information Letter: Treatment of Financial Asset Securitization Investment Trusts and consequences of elections under federal check-the-box regulations.

IT 98-0021-GIL 02/23/1998 General Information Letter: Response to question re deduction for wages not deducted for federal income tax purposes because included in the base for computing the Work Opportunity Credit.

ESTIMATED TAX

IT 98-0030-GIL 03/19/1998 General Information Letter: Duty of nonresident to pay estimated taxes when only Illinois-sourced income is derived from farming.

MISCELLANEOUS

IT 98-0012-GIL 01/27/1998 General Information Letter: Tax Protester Letter.

IT 98-0033-GIL 03/30/1998 General Information Letter: Response to taxpayer inquiry regarding use of Social Security Number under Federal Privacy Act of 1974.

IT 98-0034-GIL 03/30/1998 General Information Letter: Response to taxpayer inquiry re estate tax.

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

NET OPERATING LOSS AND NET OPERATING LOSS DEDUCTION

IT 98-0023-GIL 03/04/1998 General Information Letter: Request for regulations.

IT 98-0029-GIL 03/19/1998 General Information Letter: Request for regulations.

PARTNERSHIPS

IT 98-0009-GIL 01/22/1998 General Information Letter: Response to questions regarding taxation of partners and partnerships investing in Illinois real estate for purposes of leasing.

PENSIONS

IT 98-0024-GIL 03/06/1998 General Information Letter: Subtraction modification for disability payments.

PUBLIC LAW 86-272/NEXUS

IT 98-0008-GIL 01/21/1998 General Information Letter: Response to questions regarding nexus from provision of training services within Illinois.

IT 98-0013-GIL 02/06/1998 General Information Letter: Application of Public Law 86-272.

IT 98-0014-GIL 02/11/1998 General Information Letter: Taxpayer apportioning all income to commercial domicile state.

IT 98-0017-GIL 02/19/1998 General Information Letter: Application to mail order software company.

IT 98-0027-GIL 03/17/1998 General Information Letter: Presence of one employee within Illinois.

IT 98-0035-GIL 03/30/1998 General Information Letter: Presence of employees within Illinois.

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

S CORPORATIONS

IT 98-0001-PLR 01/12/1998 Private Letter Ruling: Illinois treatment of Qualified Subchapter S Subsidiaries.

SUBCHAPTER 'S' CORPORATIONS: SEE S CORPORATIONS

IT 98-0006-GIL 01/12/1998 General Information Letter: Response to questions regarding taxation of Qualified Subchapter S Subsidiaries.

IT 98-0018-GIL 02/20/1998 General Information Letter: Treatment of Qualified Subchapter S Subsidiaries and Electing Small Business Trusts.

IT 98-0022-GIL 02/26/1998 General Information Letter: Treatment of Qualified Subchapter S Subsidiaries.

SUBTRACTION MODIFICATIONS - HEALTH INSURANCE PREMIUMS PAID BY THE SELF-EMPLOYED

IT 98-0003-GIL 01/07/1998 General Information Letter: Response to questions re self-employed health insurance premiums deducted on Schedule A as itemized deductions.

SUBTRACTION MODIFICATIONS - OTHER RULINGS

IT 98-0031-GIL 03/24/1998 General Information Letter: Request for listing of Illinois bonds whose interest is exempt from Illinois Income Tax.

IT 98-0032-GIL 03/26/1998 General Information Letter: Deduction for claim-of-right items repaid by taxpayer governed by IRC Section 1341.

SUBTRACTION MODIFICATIONS - PENSIONS

IT 98-0015-GIL 02/13/1998 General Information Letter: Application of subtraction modification provision to disability annuities.

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

WITHHOLDING

IT 98-0004-GIL 01/08/1998 General Information Letter: Response to question re withholding on employee residing and working in Florida.

WITHHOLDING - OTHER RULINGS

IT 98-0028-GIL 03/17/1998 General Information Letter: Duty to withhold on golf tournament prizes.

WITHHOLDING - RECIPROCAL AGREEMENTS

IT 98-0016-GIL 02/13/1998 General Information Letter: Application to Iowa resident working in Illinois.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of May 12, 1998 through May 18, 1998 and have been scheduled for review by the Committee at its June 16, 1998 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
6/25/98	Secretary of State, Electronic Filing of Documents (2 Ill Adm Code 565)	3/27/98 22 Ill Reg 5829	6/16/98
6/27/98	Pollution Control Board, Organic Material Emission Standards and Limitations for the Chicago Area (35 Ill Adm Code 218)	1/9/98 22 Ill Reg 1091	6/16/98
6/27/98	Secretary of State, Cancellation, Revocation or Suspension of Licenses or Permits (92 Ill Adm Code 1040)	3/20/98 22 Ill Reg 5345	6/16/98

Rules acted upon during the quarter of April 1 through June 30, 1998 (Issues 1-13) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-40. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or jntale@ccgate.sos.state.il.us (Internet address).

PROPOSED

14-485-19	68-1252-18	17-670-19
17-110-21	68-1283-18	23-252-18
17-510-21	68-1300-21	23-451-18
17-530-21	68-1330-19	35-703-18
17-550-20	68-1456-21	35-720-18
17-570-20	77-661-20	35-721-18
17-590-21	77-1100-22	35-724-18
17-680-21	77-1110-22	35-725-18
17-690-20	77-2055R-22	35-728-18
17-715-20	80-150-20	35-733-18
17-720-20	80-302-19	50-4404-20
17-730-20	80-310-18	50-4415-19
17-740-20	80-1650-17,22	59-115-20
17-880-21	83-418-17	59-119-19
17-2010-21	86-100-17	59-121-19
17-3025-21	86-500-18,19,20	62-240-20,21
20-720-21	86-530-18	62-300-20
20-1235-18	86-670-18	68-1245-20
23-145-19	86-680-18	68-1375-20
26-201-19	86-3000-17,22	77-205-22
26-202-19	89-103-22	77-250-22
26-204-19	89-112-22	77-510-18
26-216-19	89-117-20	77-820-22
35-211-18	89-120-22	77-860-21
35-310-18	89-121-20	77-860R-21
35-580-17	89-140-18	80-1650-17
35-740-18	89-148-20	83-757-21
38-300-20	89-153-19	89-120-20
38-356-20	89-300-19	89-121-19
38-392-20	89-302-18	89-144-22
41-170-21	89-305R-19	89-302-17,21
44-1R-20	89-315-19	89-309-21
44-1-20	89-316-21	92-1010-20
44-10-22	89-431-19	
44-1120-22	89-676-19	EMERGENCY
44-1400-19	89-684-21	68-1455-20
44-5000-20	89-686-19,20	80-1650-17,22
50-909-18	89-716R-19	89-302-17
50-935-21		
50-1407-21	ADOPTED	PEREMPTORY
50-4425-18	8-755-22	8-125-22
56-350-20	11-1770-22	80-310-17,18
59-119-17	14-145-17	
	17-650-19	
	17-660-19	



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GEORGE H. RYAN
SECRETARY OF STATE
INDEX DEPARTMENT
111 E. MONROE
SPRINGFIELD, IL 62756

